

EXHIBIT 19

Page 1

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 IN RE:) Chapter 11
5 HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054-
6 Debtor.) sgj11
-----)
7 HIGHLAND CAPITAL)
MANAGEMENT, LP,) Adversary
8) Proceeding
Plaintiff,) No.
9) 21-03004
vs.)
10)
11 HIGHLAND CAPITAL)
MANAGEMENT FUND ADVISORS,)
LP,)
12)
Defendant.)
13 -----)

13 REMOTE ZOOM REPOSITION OF DENNIS C. SALTER

18 Wednesday, November 17, 2021

23 Reported by:

24 Stacey L. Daywalt

25 JOB NO. 202810

<p>1</p> <p>2</p> <p>3 Wednesday, November 17, 2021</p> <p>4 1:08 p.m.</p> <p>5</p> <p>6</p> <p>7 Remote Zoom Deposition of DENNIS C.</p> <p>8 SAUTER, held before Stacey L. Daywalt, a Court</p> <p>9 Reporter and Notary Public of the District of</p> <p>10 Columbia.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 A P P E A R A N C E S:</p> <p>2 (All appearances via remote Zoom)</p> <p>3</p> <p>4 PACHULSKI STANG ZIEHL & JONES</p> <p>5 Attorneys for Plaintiff</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9</p> <p>10 MUNSCH HARDT KOPF & HARR</p> <p>11 Attorneys for Defendant</p> <p>12 500 North Akard Street</p> <p>13 Dallas, Texas 75201</p> <p>14 BY: DAVOR RUKAVINA, ESQ.</p> <p>15</p> <p>16 STINSON LLP</p> <p>17 Attorneys for James Dondero and Nancy</p> <p>18 Dondero</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 BY: MICHAEL AIGEN, ESQ.</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24</p> <p>25 LA ASIA CANTY</p>	<p>Page 3</p>
<p>1 D. Sauter</p> <p>2 DENNIS C. SAUTER,</p> <p>3 called as a witness, having been</p> <p>4 duly sworn by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. MORRIS:</p> <p>9 Q. Can you please state your name for</p> <p>10 the record.</p> <p>11 A. Dennis Sauter.</p> <p>12 Q. Good afternoon, Mr. Sauter. My name</p> <p>13 is John Morris. I'm an attorney at Pachulski</p> <p>14 Stang Ziehl & Jones. We are counsel to the</p> <p>15 reorganized Highland Capital Management, LP.</p> <p>16 Are you aware of that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And we're here for your</p> <p>19 deposition today. Correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I've examined you previously.</p> <p>22 Is that right?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Okay. Have you ever been deposed</p> <p>25 before?</p>	<p>Page 4</p> <p>1 D. Sauter</p> <p>2 A. I don't think so.</p> <p>3 Q. Okay. So very simple ground rules.</p> <p>4 I'm going to ask you a series of</p> <p>5 questions, and it's important that you allow me</p> <p>6 to finish my question before you begin the</p> <p>7 answer.</p> <p>8 Is that fair?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And I will certainly attempt to do</p> <p>11 the same for you and – insofar as I will</p> <p>12 attempt to allow you to finish your answer</p> <p>13 before I begin my question.</p> <p>14 But if I fail to do that, will you</p> <p>15 let me know?</p> <p>16 A. I will.</p> <p>17 Q. If there's anything that I ask you</p> <p>18 that you don't understand, will you let me know</p> <p>19 that?</p> <p>20 A. I will.</p> <p>21 Q. If you want to take a break at any</p> <p>22 time, just let me know and I'll try to</p> <p>23 accommodate you. I'd only ask that you don't</p> <p>24 ask for a break while a question is pending.</p> <p>25 Is that fair?</p>	<p>Page 5</p>

<p>1 D. Sauter</p> <p>2 A. That's fair.</p> <p>3 Q. Okay. Do you have a license to</p> <p>4 practice law, sir?</p> <p>5 A. I do.</p> <p>6 Q. In what states are you admitted to</p> <p>7 practice?</p> <p>8 A. Just Texas.</p> <p>9 Q. When did you obtain your license?</p> <p>10 A. November of 2001.</p> <p>11 Q. And did you graduate from law</p> <p>12 school?</p> <p>13 A. I did.</p> <p>14 Q. Where did you graduate from law</p> <p>15 school?</p> <p>16 A. Southern Methodist University.</p> <p>17 Q. And can you describe for me your</p> <p>18 employment history from the time you graduated</p> <p>19 law school until today.</p> <p>20 A. Sure.</p> <p>21 Out of law school I began at a firm</p> <p>22 called Winstead Sechrest & Minick. And I was</p> <p>23 there just till tax day, so April 15 of 2002,</p> <p>24 when my group moved to a firm at the time that</p> <p>25 was called Godwin Gruber. I was at Godwin</p>	Page 6	Page 7
<p>1 D. Sauter</p> <p>2 Nexpoint, did you have any particular expertise</p> <p>3 in a specified area of the law?</p> <p>4 A. For about the last ten years, real</p> <p>5 estate.</p> <p>6 It was, before that, kind of a</p> <p>7 hybrid of construction related litigation,</p> <p>8 landlord-tenant disputes, you know,</p> <p>9 foreclosures. It was all real estate related</p> <p>10 litigation and then real estate transactional</p> <p>11 work.</p> <p>12 Q. How did you come to become employed</p> <p>13 by Nexpoint?</p> <p>14 A. I had worked with the folks here at</p> <p>15 Nexpoint for my entire tenure at Wick Phillips,</p> <p>16 and they gave me an offer and I accepted.</p> <p>17 Q. What offer did they give you? What</p> <p>18 position?</p> <p>19 A. I was hired to be general counsel of</p> <p>20 real estate.</p> <p>21 Q. Are you still the general counsel of</p> <p>22 real estate?</p> <p>23 A. I'm now the general counsel of</p> <p>24 Nexpoint.</p> <p>25 Q. When did you become the general</p>	Page 8	Page 9

<p>1 D. Sauter</p> <p>2 A. I believe it's managing director.</p> <p>3 Q. When did you begin reporting to</p> <p>4 Mr. McGraner?</p> <p>5 A. The day I was hired.</p> <p>6 Q. What are your duties and</p> <p>7 responsibilities today as the general counsel</p> <p>8 of Nexpoint?</p> <p>9 A. A lot different than I anticipated</p> <p>10 when I came on.</p> <p>11 Q. Fair.</p> <p>12 A. It's a little bit of everything. I</p> <p>13 get lots of questions from lots of different</p> <p>14 people.</p> <p>15 As you can imagine, there's been</p> <p>16 quite a shuffle with the Skyview formation,</p> <p>17 people leaving, people staying, and so, you</p> <p>18 know, it's been fairly fluid. So I try to</p> <p>19 handle whatever somebody brings me.</p> <p>20 Q. In your capacity as general counsel,</p> <p>21 do you have any responsibility for overseeing</p> <p>22 Nexpoint's litigation matters?</p> <p>23 A. I do.</p> <p>24 Q. Okay. And do you have</p> <p>25 responsibility for overseeing Nexpoint's</p>	Page 10	<p>1 D. Sauter</p> <p>2 defense of the lawsuit that Highland has</p> <p>3 commenced against it?</p> <p>4 MR. RUKAVINA: Allow me to interject</p> <p>5 just a little bit here, John.</p> <p>6 You subpoenaed Mr. Sauter in the</p> <p>7 HCMFA lawsuit.</p> <p>8 Why are you asking him all about</p> <p>9 this Nexpoint?</p> <p>10 MR. MORRIS: Just because he told me</p> <p>11 that's where he works.</p> <p>12 MR. RUKAVINA: Yeah, that's fine.</p> <p>13 I mean, I'm not trying to be rude.</p> <p>14 Just –</p> <p>15 MR. MORRIS: I appreciate that.</p> <p>16 MR. RUKAVINA: – if you're –</p> <p>17 (Simultaneous crosstalk.)</p> <p>18 MR. MORRIS: Duly noted. Thank you,</p> <p>19 Davor.</p> <p>20 THE REPORTER: Please watch the</p> <p>21 overlap of talking. Thank you.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, Mr. Rukavina brings up a</p> <p>24 good point.</p> <p>25 Are you also the general counsel of</p>	Page 11
<p>1 D. Sauter</p> <p>2 Highland Capital Management Fund Advisors, LLP?</p> <p>3 A. I'm not.</p> <p>4 Q. You are not?</p> <p>5 A. I'm not the general counsel of</p> <p>6 Highland Capital Management Fund Advisors.</p> <p>7 Q. Okay. Can we refer to that entity</p> <p>8 as HCMFA today?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have any title or role with</p> <p>11 HCMFA today?</p> <p>12 A. I don't have any official capacity</p> <p>13 with HCMFA, although I do perform work from</p> <p>14 time to time for HCMFA.</p> <p>15 Q. Okay. Does HCMFA have a general</p> <p>16 counsel, to the best of your knowledge?</p> <p>17 A. It does not.</p> <p>18 Q. Does HCMFA have any officers today,</p> <p>19 to the best of your knowledge?</p> <p>20 A. It does, but I'm not sure I can name</p> <p>21 them off to you.</p> <p>22 Q. Okay. What services do you provide</p> <p>23 to HCMFA?</p> <p>24 A. Again, like other affiliated</p> <p>25 entities, when it has legal needs that meet my</p>	Page 12	<p>1 D. Sauter</p> <p>2 expertise, people bring it to me and I work on</p> <p>3 it.</p> <p>4 Q. And what's an "affiliated entity" in</p> <p>5 the way that you've used that term?</p> <p>6 A. I generally refer to HCMFA, Nexpoint</p> <p>7 Advisors and the wholly owned subsidiaries of</p> <p>8 Nexpoint Advisors as the affiliated entities.</p> <p>9 HCMFA also owns Nexpoint Securities,</p> <p>10 which is the broker dealer, and so I do work</p> <p>11 with those folks from time to time as well.</p> <p>12 Q. Is there a source of affiliation</p> <p>13 between Nexpoint and HCMFA?</p> <p>14 A. Yes, Mr. Dondero.</p> <p>15 Q. And he controls them both to the</p> <p>16 best of your knowledge. Is that right?</p> <p>17 A. I – I guess it depends on how you</p> <p>18 define "control."</p> <p>19 But yes, he is a controlling person</p> <p>20 of Nexpoint Advisors, and yes, for all intents</p> <p>21 and purposes, he's the controlling person of</p> <p>22 HCMFA.</p> <p>23 Q. Okay. And can we refer to HCMFA and</p> <p>24 Nexpoint Advisors, LP together as "the</p> <p>25 advisors"?</p>	Page 13

<p>1 D. Sauter</p> <p>2 A. That's fine.</p> <p>3 Q. The advisors are each advisory</p> <p>4 firms. Is that right?</p> <p>5 A. Correct.</p> <p>6 Q. And each of them provide advisory</p> <p>7 services to certain funds. Is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Do you hold any titles with</p> <p>10 any of the funds that are advised by either of</p> <p>11 the advisors?</p> <p>12 A. Yes, I am general counsel for</p> <p>13 Nexpoint Residential Trust and I'm general</p> <p>14 counsel of Nexpoint Real Estate Finance.</p> <p>15 Q. Any others?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. Do you have –</p> <p>18 A. Wait. Wait. Let me clarify.</p> <p>19 I think I am general counsel of</p> <p>20 Nexpoint Real Estate Advisors, and I may be</p> <p>21 general counsel of each of them. I think there</p> <p>22 are nine in total.</p> <p>23 Q. Okay. And are each of them separate</p> <p>24 funds?</p> <p>25 A. Each of the advisors are – manage a</p>	Page 14	<p>1 D. Sauter</p> <p>2 discrete business line. They're separate</p> <p>3 entities, but not necessarily funds.</p> <p>4 Q. And are each of them owned</p> <p>5 indirectly or directly by Nexpoint Advisors,</p> <p>6 LP?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay.</p> <p>9 When did you first meet Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 I think I met him once at an event</p> <p>12 that I was invited to years ago, maybe 2017.</p> <p>13 Q. Do you know if he holds a title at</p> <p>14 HCMFA?</p> <p>15 A. I don't believe he does.</p> <p>16 Q. How about Nexpoint? Does he hold a</p> <p>17 title at Nexpoint?</p> <p>18 A. Yes, he's the president.</p> <p>19 Q. And even though he doesn't hold a</p> <p>20 title at HCMFA, it's your understanding that he</p> <p>21 controls HCMFA. Is that right?</p> <p>22 A. I don't know that I would say that.</p> <p>23 And again, I would need to look at</p> <p>24 the organizational documents.</p> <p>25 Q. Well, as – withdrawn.</p>	Page 15
<p>1 D. Sauter</p> <p>2 Do you know if Mr. Dondero serves as</p> <p>3 the portfolio manager for any of the funds to</p> <p>4 which the advisors provide advisory services?</p> <p>5 A. He does.</p> <p>6 I don't know which ones.</p> <p>7 Q. We're going to talk in a little</p> <p>8 while about a TerreStar NAV issue.</p> <p>9 MR. MORRIS: And Stacey, that's all</p> <p>10 caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].</p> <p>11 Q. We're going to talk a little bit</p> <p>12 about a TerreStar NAV issue.</p> <p>13 Are you generally familiar with</p> <p>14 that?</p> <p>15 A. Generally.</p> <p>16 Q. Okay. And is it your understanding</p> <p>17 that that NAV issue, that TerreStar NAV issue,</p> <p>18 related to certain equity positions that were</p> <p>19 held by certain funds managed by HCMFA?</p> <p>20 A. Yes, I think it was – Global</p> <p>21 Allocation Fund is the one that was</p> <p>22 particularly the insured.</p> <p>23 Q. And can we refer to that as GAF?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you know who the portfolio</p>	Page 16	<p>1 D. Sauter</p> <p>2 manager of GAF was in 2019?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if it was Mr. Dondero?</p> <p>5 A. I do not.</p> <p>6 Q. In the course of your investigation,</p> <p>7 did you ever ask who the portfolio manager of</p> <p>8 GAF was?</p> <p>9 A. I did not.</p> <p>10 Q. Do you know Frank Waterhouse?</p> <p>11 A. I do.</p> <p>12 Q. When did you first meet</p> <p>13 Mr. Waterhouse?</p> <p>14 A. I think I met him just before I came</p> <p>15 on. It would have been maybe December of 2019.</p> <p>16 Q. Okay. Do you know if Mr. Waterhouse</p> <p>17 holds any titles with either of the advisors?</p> <p>18 A. I believe so, but I'm not exactly</p> <p>19 sure.</p> <p>20 MR. RUKAVINA: I'm going to object</p> <p>21 to vague or form there.</p> <p>22 What time are you specifying,</p> <p>23 Mr. Morris?</p> <p>24 MR. MORRIS: I appreciate that. Let</p> <p>25 me restate the question.</p>	Page 17

<p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Sauter, do you know if</p> <p>4 Mr. Waterhouse held any position with either of</p> <p>5 the advisors at any time in 2019?</p> <p>6 A. I believe he did, but I – I would</p> <p>7 say it was probably treasurer and CFO, but I'm</p> <p>8 speculating.</p> <p>9 Q. In the course of your investigation,</p> <p>10 did you try to determine what title</p> <p>11 Mr. Waterhouse held with HCMFA?</p> <p>12 A. I have not.</p> <p>13 Q. Have you ever tried to determine</p> <p>14 what title Mr. Waterhouse held at HCMFA at any</p> <p>15 time?</p> <p>16 A. At one point I knew what it is. I</p> <p>17 just can't recall.</p> <p>18 Q. Okay. Does – do you know if</p> <p>19 Mr. Waterhouse holds a position with HCMFA</p> <p>20 today?</p> <p>21 A. I believe he does.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 what that position is?</p> <p>24 A. Again, I think it's CFO and/or</p> <p>25 treasurer. That's consistent, I think.</p>	Page 18	Page 19
<p>1 D. Sauter</p> <p>2 Mr. Waterhouse ran.</p> <p>3 Q. Right.</p> <p>4 I'm asking you specifically about</p> <p>5 whether he held positions at any of the funds.</p> <p>6 Did you understand that when I asked</p> <p>7 my question?</p> <p>8 A. I don't know whether he held any</p> <p>9 position with the funds.</p> <p>10 Q. Okay. And during your</p> <p>11 investigation, did you make any effort to try</p> <p>12 to determine whether he held any positions with</p> <p>13 GAF?</p> <p>14 Let's be very specific.</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know a gentleman named Will</p> <p>17 Mabry?</p> <p>18 A. I do.</p> <p>19 Q. And do you know if Mr. Mabry was</p> <p>20 ever employed by either of the advisors?</p> <p>21 A. I don't know who employed Mr. Mabry.</p> <p>22 Q. Do you know if he was ever employed</p> <p>23 by Highland Capital Management, LP?</p> <p>24 A. I would suspect that he was employed</p> <p>25 by Highland Capital Management, LP.</p>	Page 20	Page 21

<p>1 D. Sauter</p> <p>2 A. I don't know.</p> <p>3 Q. And is it your understanding that he</p> <p>4 was part of a valuation team?</p> <p>5 I think you used that term.</p> <p>6 A. Yes, I believe he was.</p> <p>7 Q. Okay. And what's the basis for that</p> <p>8 understanding on your part?</p> <p>9 A. Discussions that I've had with Frank</p> <p>10 and his knowledge of the TerreStar NAV error.</p> <p>11 Q. Did Mr. Mabry tell you that he was</p> <p>12 part of the valuation team?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did you ask him?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if Mr. Mabry played any</p> <p>17 role in any aspect of the TerreStar</p> <p>18 investigation that was conducted by the SEC?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you ask Mr. Mabry if he played</p> <p>21 any role in connection with the SEC</p> <p>22 investigation?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know if Mr. Mabry played any</p> <p>25 role in formulating HCMFA's response to the</p>	Page 22	Page 23
<p>1 D. Sauter</p> <p>2 A. Okay.</p> <p>3 (Exhibit 181, Declaration of Dennis</p> <p>4 C. Sauter, Jr., previously marked for</p> <p>5 identification.)</p> <p>6 Q. Okay. Do you see the first page of</p> <p>7 this document states that it's your</p> <p>8 declaration?</p> <p>9 A. I do.</p> <p>10 Q. And if we can go to the signature</p> <p>11 line, please.</p> <p>12 And that's your signature there,</p> <p>13 sir?</p> <p>14 A. It is.</p> <p>15 Q. And did you sign this on or about</p> <p>16 May 21st, 2021?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you remember the purpose of this</p> <p>19 declaration?</p> <p>20 A. It was requesting to file an amended</p> <p>21 answer.</p> <p>22 Q. Okay. Is it fair to say that your</p> <p>23 declaration sets forth the factual basis for</p> <p>24 the proposed amendment?</p> <p>25 A. Yes.</p>	Page 24	Page 25

<p>1 D. Sauter</p> <p>2 attachment dated 5/2/19, D-CNL003777-779,</p> <p>3 previously marked for identification.)</p> <p>4 Q. So if could just scroll down a</p> <p>5 little bit.</p> <p>6 Do you see there's – do you see</p> <p>7 it's – there's an e-mail from David Klos dated</p> <p>8 May 2nd?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who Mr. Klos is?</p> <p>11 A. I do.</p> <p>12 Q. And who do you understand Mr. Klos</p> <p>13 to be? What role did he play in May of 2019?</p> <p>14 A. I don't know.</p> <p>15 I know he worked under Frank.</p> <p>16 Q. He worked out of – do you see</p> <p>17 there's an e-mail to a corporate accounting</p> <p>18 group?</p> <p>19 A. Yes.</p> <p>20 Q. Have you ever sent or received an</p> <p>21 e-mail from a Highland corporate accounting</p> <p>22 e-mail chain called the corporate accounting</p> <p>23 group?</p> <p>24 A. I've never sent an e-mail from the</p> <p>25 corporate accounting group.</p>	<p>Page 26</p> <p>1 D. Sauter</p> <p>2 I can't recall receiving one from</p> <p>3 them either.</p> <p>4 Q. Do you see that in this e-mail</p> <p>5 Mr. Klos asks to have \$2.4 million transferred</p> <p>6 from HCMLP to HCMFA?</p> <p>7 A. I do.</p> <p>8 Q. And do you see that he states:</p> <p>9 "This is a new interco loan"?</p> <p>10 A. I do.</p> <p>11 Q. And if we can see the response</p> <p>12 above, do you see how Ms. – do you know</p> <p>13 Kristin Hendrix?</p> <p>14 A. I do.</p> <p>15 Q. And who is Ms. Hendrix, to the best</p> <p>16 of your knowledge.</p> <p>17 A. I believe she worked under Mr. Klos.</p> <p>18 Q. And do you see that she wrote to</p> <p>19 someone named Blair and attached a copy of a</p> <p>20 note?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. That's what it says.</p> <p>24 Q. And can we go to the next page,</p> <p>25 please.</p>
<p>1 D. Sauter</p> <p>2 And do you see that this is a</p> <p>3 promissory note for \$2.4 million dated May 2,</p> <p>4 2019?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And can we go to the</p> <p>7 signature line.</p> <p>8 Do you see Mr. Waterhouse's</p> <p>9 signature?</p> <p>10 Do you see Mr. Waterhouse's</p> <p>11 signature, sir?</p> <p>12 A. I can't verify whether that's his</p> <p>13 signature, but I'll take your word for it.</p> <p>14 Q. Okay. Can you go to the top of the</p> <p>15 note, please.</p> <p>16 Do you see that the maker is defined</p> <p>17 to be Highland Capital Management Fund</p> <p>18 Advisors, LP?</p> <p>19 A. I do see that that's what it says on</p> <p>20 the first page.</p> <p>21 Q. Okay. And this is one of the two</p> <p>22 notes that was the source of your</p> <p>23 investigation. Right? This was one of the two</p> <p>24 notes that you were investigating the origins</p> <p>25 of?</p>	<p>Page 28</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's look at the next note,</p> <p>4 please.</p> <p>5 (Exhibit 57, Promissory Note dated</p> <p>6 5/3/19, D-CNL003764-65, previously marked for</p> <p>7 identification.)</p> <p>8 Do you see this is a note for</p> <p>9 \$5 million and it's dated the next day,</p> <p>10 May 3rd, 2019?</p> <p>11 A. I see that.</p> <p>12 Q. Do you see that it's – it also</p> <p>13 defines as the maker Highland Capital</p> <p>14 Management Fund Advisors, LP?</p> <p>15 A. That's what it says on the first</p> <p>16 page, yes.</p> <p>17 Q. Okay. And if we can go to the</p> <p>18 signature line.</p> <p>19 Again, does that appear to be</p> <p>20 Mr. Waterhouse's signature?</p> <p>21 A. Again, I can't verify whether that's</p> <p>22 Mr. Waterhouse's signature or not.</p> <p>23 But it does say that the maker is</p> <p>24 Frank Waterhouse, not Highland Capital</p> <p>25 Management Fund Advisors.</p>

<p>1 D. Sauter</p> <p>2 Q. I understand.</p> <p>3 But the definition of "maker" is</p> <p>4 above. Correct?</p> <p>5 A. I wouldn't – that's not how I would</p> <p>6 draft a promissory note.</p> <p>7 Q. I didn't ask you how you would draft</p> <p>8 it.</p> <p>9 I'm just asking you whether, having</p> <p>10 just looked at the document and as a lawyer</p> <p>11 admitted to practice in law, would you agree</p> <p>12 that the term "maker" is a defined term in this</p> <p>13 document?</p> <p>14 MR. RUKAVINA: I'll just object to</p> <p>15 form here and also that this witness has not</p> <p>16 been called as an expert, even though he's a</p> <p>17 lawyer.</p> <p>18 So I'll just preserve that for the</p> <p>19 record.</p> <p>20 MR. MORRIS: Fair. That's fine.</p> <p>21 THE WITNESS: I would agree that</p> <p>22 "maker" is defined on the first page, but that</p> <p>23 would be an improper signature block, if it was</p> <p>24 intended to be Highland Capital Management Fund</p> <p>25 Advisors.</p>	Page 30	<p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. We're going to refer to</p> <p>4 these two notes collectively as "the notes."</p> <p>5 Is that okay?</p> <p>6 A. That's fine.</p> <p>7 Q. And these are the two notes that you</p> <p>8 were investigating. Right?</p> <p>9 A. Yes.</p> <p>10 Q. And it's your understanding that</p> <p>11 these are the two notes that Highland Capital</p> <p>12 Management is suing to collect on. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. According to your</p> <p>15 declaration, if we can go to Paragraph 13, if</p> <p>16 we can put that back up on the screen, as part</p> <p>17 of the initial investigation – withdrawn.</p> <p>18 I'm going to use the phrase "initial</p> <p>19 investigation" to mean the investigation that</p> <p>20 you conducted between the time the complaint</p> <p>21 was filed and the time that HCMFA filed its</p> <p>22 original answer on March 1st.</p> <p>23 Is that okay?</p> <p>24 A. Sure.</p> <p>25 Q. And during that initial</p>	Page 31
<p>1 D. Sauter</p> <p>2 investigation, you spoke with Jim Dondero.</p> <p>3 Correct?</p> <p>4 A. I did.</p> <p>5 Q. Okay. And according to</p> <p>6 Paragraph 13, he couldn't recall the genesis of</p> <p>7 the notes. Is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you show him the notes?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you tell him that the notes were</p> <p>12 dated May 2nd and May 3rd, 2019?</p> <p>13 A. I don't recall that either.</p> <p>14 Q. Did you do anything to try to</p> <p>15 refresh his recollection about the timing of</p> <p>16 the notes?</p> <p>17 A. I'm sure I did.</p> <p>18 But I don't recall that conversation</p> <p>19 in any detail as I'm sitting here today.</p> <p>20 Q. Did you tell him the principal</p> <p>21 amount of the notes?</p> <p>22 A. Yes.</p> <p>23 Q. And even though you told him the</p> <p>24 principal amount of the notes, he still had no</p> <p>25 recollection as to what they related to. Is</p>	Page 32	<p>1 D. Sauter</p> <p>2 that right?</p> <p>3 A. He couldn't recall the genesis,</p> <p>4 correct.</p> <p>5 Q. Did he have any recollection at all</p> <p>6 as to what the notes related to?</p> <p>7 A. I don't – I don't believe so,</p> <p>8 because if he had, then I would have been able</p> <p>9 to pin it down further.</p> <p>10 Q. How many conversations did you have</p> <p>11 with Mr. Dondero as part of your initial</p> <p>12 investigation?</p> <p>13 A. I don't recall.</p> <p>14 Two, three.</p> <p>15 Q. Was there anybody present other than</p> <p>16 the two of you?</p> <p>17 A. Again, I don't recall.</p> <p>18 Q. Do you recall if they took place on</p> <p>19 the phone or were they in person?</p> <p>20 A. It would have been in person.</p> <p>21 Q. And why do you say it would have</p> <p>22 been in person?</p> <p>23 A. Well, now that you say that, no, it</p> <p>24 probably wasn't in person because he would not</p> <p>25 have been in the office at that time.</p>	Page 33

<p>1 D. Sauter</p> <p>2 There was obviously a lot of things</p> <p>3 going on at this point. Mr. Dondero had been</p> <p>4 evicted from the building, and so that made –</p> <p>5 I shouldn't say evicted. He'd been kicked out</p> <p>6 by the debtor, and so that made our</p> <p>7 communications a little more difficult.</p> <p>8 So I would have spoken with him on</p> <p>9 the phone because I did not go over to the</p> <p>10 NexBank office very often.</p> <p>11 Q. Paragraph 13 says that you also</p> <p>12 spoke with "the few employees of HCMFA."</p> <p>13 Do you see that in the middle of the</p> <p>14 paragraph?</p> <p>15 A. Yes.</p> <p>16 Q. Can you identify the other CMFA</p> <p>17 employees that you spoke with as part of your</p> <p>18 initial investigation?</p> <p>19 A. I would have spoken with Dustin</p> <p>20 Norris and –</p> <p>21 Q. Do you recall speaking – I</p> <p>22 apologize for interrupting.</p> <p>23 Go ahead.</p> <p>24 A. And so he wasn't an HCMFA employee,</p> <p>25 but Jason Post.</p>	Page 34	<p>1 D. Sauter</p> <p>2 Q. Do you have a recollection of</p> <p>3 speaking to Mr. Norris, or are you just</p> <p>4 sumising that you probably did?</p> <p>5 A. I'm sumising that I probably would</p> <p>6 have.</p> <p>7 There was a lot, again, that was</p> <p>8 happening. I didn't have the historical</p> <p>9 knowledge of these things, and so I talked with</p> <p>10 Mr. Post and Mr. Norris daily about everything</p> <p>11 that was going on just to get some background</p> <p>12 on all of the moving parts.</p> <p>13 Q. Okay. Do you know if Mr. Norris</p> <p>14 held any position with HCMFA in 2019?</p> <p>15 A. I don't – I don't know for certain.</p> <p>16 I believe he did.</p> <p>17 I can't recall what his position</p> <p>18 would have been.</p> <p>19 Q. Does he have a position with HCMFA</p> <p>20 today, to the best of your knowledge?</p> <p>21 A. I believe he does.</p> <p>22 Q. And what do you understand his</p> <p>23 position to be?</p> <p>24 A. I would say vice president.</p> <p>25 Q. Do you know when he became vice</p>	Page 35
<p>1 D. Sauter</p> <p>2 president of HCMFA?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if he was vice president</p> <p>5 of HCMFA in October 2020?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if Mr. Norris holds any</p> <p>8 positions with DAF – I'm sorry.</p> <p>9 Do you know if Mr. Norris holds any</p> <p>10 positions with GAF?</p> <p>11 A. I don't know.</p> <p>12 Q. How about Mr. Post? Do you know if</p> <p>13 Mr. Post held any positions with HCMFA in 2019?</p> <p>14 A. I don't.</p> <p>15 Q. Do you know if he holds any</p> <p>16 positions with HCMFA today?</p> <p>17 A. He does not.</p> <p>18 Q. Is Mr. Post a compliance officer, to</p> <p>19 the best of your knowledge?</p> <p>20 A. He was.</p> <p>21 He left a week ago to take another</p> <p>22 job.</p> <p>23 Q. So he was – and who did he – for</p> <p>24 whom did he serve as the chief compliance</p> <p>25 officer until a week ago?</p>	Page 36	<p>1 D. Sauter</p> <p>2 A. He was chief compliance officer for</p> <p>3 Nexpoint Advisors.</p> <p>4 He may have been the chief</p> <p>5 compliance officer for HCMFA as well.</p> <p>6 Q. Okay.</p> <p>7 A. And if I had to guess, he would have</p> <p>8 had those same positions back in 2019 –</p> <p>9 Q. Okay.</p> <p>10 A. – because Thomas Surgent was the</p> <p>11 chief compliance officer for HCMLP and Jason</p> <p>12 worked under him.</p> <p>13 And I think that started sometime in</p> <p>14 2014, maybe earlier.</p> <p>15 Q. And did Mr. Norris and Mr. Post tell</p> <p>16 you during your initial investigation that they</p> <p>17 had no knowledge of the notes?</p> <p>18 A. Yeah, generally I don't think that</p> <p>19 they were aware of the notes, or I should say</p> <p>20 they weren't aware of the genesis of the notes.</p> <p>21 Q. Were they aware of the existence of</p> <p>22 the notes?</p> <p>23 A. They were.</p> <p>24 Q. Did they tell you when they had</p> <p>25 learned of the existence of the notes?</p>	Page 37

<p>1 D. Sauter</p> <p>2 A. I think it's something that I raised</p> <p>3 to them because I didn't know where the notes</p> <p>4 had come from.</p> <p>5 Q. Right.</p> <p>6 And they told you that they were</p> <p>7 aware of the notes but they didn't know the</p> <p>8 genesis of them?</p> <p>9 A. I don't recall whether they were</p> <p>10 aware of the notes before I asked about them.</p> <p>11 Q. Did you ask them if they were aware</p> <p>12 of the notes prior to the time you showed it to</p> <p>13 them?</p> <p>14 A. I would have asked them what the</p> <p>15 notes were about.</p> <p>16 Q. I don't want to know what you would</p> <p>17 have done.</p> <p>18 I know this is hard, Mr. Sauter.</p> <p>19 I'm really just asking you to search your</p> <p>20 memory.</p> <p>21 Do you recall asking them whether</p> <p>22 they were aware of the existence of the notes</p> <p>23 prior to your conversation with them?</p> <p>24 A. I don't recall if I asked whether</p> <p>25 they were aware of the existence of the notes</p>	Page 38	<p>1 D. Sauter</p> <p>2 prior to my conversation with them.</p> <p>3 Q. Now, Paragraph 13 says that</p> <p>4 Mr. Dondero could not recall the genesis of the</p> <p>5 notes.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did Mr. Dondero indicate to you that</p> <p>9 he was aware of the existence of the notes even</p> <p>10 though he couldn't recall the genesis of the</p> <p>11 notes?</p> <p>12 A. That's not how I would characterize</p> <p>13 it, but...</p> <p>14 Q. How would you characterize it?</p> <p>15 A. He suggested that I talk to</p> <p>16 Mr. Waterhouse.</p> <p>17 Q. Did you ask Mr. Dondero when he</p> <p>18 first learned of the existence of the notes?</p> <p>19 A. No.</p> <p>20 Q. Did he say to you anything that</p> <p>21 caused you to believe that he was unaware of</p> <p>22 the existence of the notes prior to the</p> <p>23 commencement of the lawsuit?</p> <p>24 A. No.</p> <p>25 I guess let me clarify.</p>	Page 39
<p>1 D. Sauter</p> <p>2 He didn't make any comments that</p> <p>3 made me think one way or the other.</p> <p>4 Q. And you didn't ask.</p> <p>5 Is that fair?</p> <p>6 A. Correct, I did not ask.</p> <p>7 Q. So you had no information as to</p> <p>8 whether or not Mr. Dondero actually knew of the</p> <p>9 existence of the notes prior to the</p> <p>10 commencement of the lawsuit.</p> <p>11 Is that fair?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Paragraph 13 also states that</p> <p>14 you reviewed limited books and records of</p> <p>15 HCMFA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What books and records did</p> <p>19 you review as part of your initial</p> <p>20 investigation?</p> <p>21 A. I don't recall exactly what I looked</p> <p>22 at or for.</p> <p>23 I literally had to just go onto the</p> <p>24 system and try to find anything that related to</p> <p>25 the notes so I could try to find out what they</p>	Page 40	<p>1 D. Sauter</p> <p>2 were.</p> <p>3 Q. Did you make any effort to try to</p> <p>4 determine whether HCMFA had accounted for the</p> <p>5 notes in its books and records?</p> <p>6 A. I did not.</p> <p>7 Q. Do you know today whether HCMFA ever</p> <p>8 accounted for the notes in its books and</p> <p>9 records?</p> <p>10 A. I don't know.</p> <p>11 Q. Have you ever reviewed HCMFA's</p> <p>12 balance sheets?</p> <p>13 A. I think I have, but I don't – I</p> <p>14 can't recall exactly when.</p> <p>15 Q. Did you ever make any effort to</p> <p>16 determine whether HCMFA carried these notes on</p> <p>17 its balance sheet as liabilities?</p> <p>18 A. I did not.</p> <p>19 Q. Do you know if HCMFA ever requested</p> <p>20 an extension of time to respond to the</p> <p>21 complaint?</p> <p>22 A. I don't know, but I would assume so.</p> <p>23 Q. Okay. Do you have any knowledge of</p> <p>24 HCMFA having done so?</p> <p>25 A. No.</p>	Page 41

<p>1 D. Sauter</p> <p>2 Q. Okay. Do you know if – prior to</p> <p>3 the time it filed its original answer, whether</p> <p>4 HCMFA ever asked HCMLP to provide any documents</p> <p>5 in connection with the adversary proceeding?</p> <p>6 A. Say that again.</p> <p>7 Q. Sure.</p> <p>8 So HCMFA filed its answer on</p> <p>9 March 1st, according to Paragraph 12.</p> <p>10 Do I have that right?</p> <p>11 A. I believe that's right.</p> <p>12 Q. Okay. Do you know if HCMFA ever</p> <p>13 asked Highland for any documents before it</p> <p>14 filed its answer?</p> <p>15 A. I don't recall.</p> <p>16 Q. So at the time HCMFA filed its</p> <p>17 answer, Mr. Dondero couldn't recall the genesis</p> <p>18 of the notes. Correct?</p> <p>19 A. That's right.</p> <p>20 Q. And neither Mr. Post nor Mr. Norris</p> <p>21 could recall the genesis of the notes.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. And HCMFA had limited access to</p> <p>25 books and records. Correct?</p>	Page 42	<p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. And HCMFA had no access to the</p> <p>4 debtor's employees who had provided services to</p> <p>5 HCMFA under shared services agreements.</p> <p>6 Correct?</p> <p>7 A. I think our view was it was</p> <p>8 potentially improper to reach out to those</p> <p>9 employees on a matter that was adverse to</p> <p>10 HCMLP, and so we refrained from doing so.</p> <p>11 Q. Okay. And so under those</p> <p>12 circumstances, HCMFA nevertheless filed an</p> <p>13 answer that asserted no affirmative defenses.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. But this situation changed in</p> <p>17 mid-April 2001. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. If we can scroll down to</p> <p>20 Paragraph 19.</p> <p>21 (Discussion was held off the</p> <p>22 record.)</p> <p>23 Q. So in April 2001, the situation</p> <p>24 changed because Mr. Waterhouse and other former</p> <p>25 employees of Highland had migrated over to</p>	Page 43
<p>1 D. Sauter</p> <p>2 Skyview so that you had access to them. Is</p> <p>3 that right?</p> <p>4 A. Correct.</p> <p>5 Q. And that's when you conducted the</p> <p>6 second phase of your investigation. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you'll see at the end of Page 4</p> <p>9 you reference that the debtor had provided</p> <p>10 access to HCMFA of much of its books and</p> <p>11 records.</p> <p>12 Do I have that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what books and records</p> <p>15 did Highland provide between March 1st and</p> <p>16 mid-April when you conducted the second phase</p> <p>17 of your investigation?</p> <p>18 Are there any particular books and</p> <p>19 records that you're referring to in that</p> <p>20 sentence?</p> <p>21 A. I can't recall exactly what it was.</p> <p>22 There was a process that we were</p> <p>23 going through that I think – if you'll recall,</p> <p>24 that we went back and forth on obtaining access</p> <p>25 to books and records, submitting written</p>	Page 44	<p>1 D. Sauter</p> <p>2 requests, and those were either granted or</p> <p>3 denied. And so there were a litany of</p> <p>4 documents that were sent over.</p> <p>5 Q. Can you identify any documents that</p> <p>6 you reviewed as part of either the initial</p> <p>7 investigation or the follow-up investigation in</p> <p>8 April 2021?</p> <p>9 A. Yes.</p> <p>10 I would have reviewed documents</p> <p>11 related to the TerreStar NAV error.</p> <p>12 Q. And can you describe what those</p> <p>13 documents are.</p> <p>14 A. Memos.</p> <p>15 Q. Okay. Do you recall how many memos</p> <p>16 you reviewed that concerned the TerreStar NAV</p> <p>17 issue?</p> <p>18 A. I want to say that there were three,</p> <p>19 four or five, something along those lines.</p> <p>20 I think there was a memo that was</p> <p>21 submitted to the board and then maybe some</p> <p>22 communications with the SEC.</p> <p>23 Q. And is it your testimony that HCMFA</p> <p>24 did not have those memos until after March 1st,</p> <p>25 2021?</p>	Page 45

<p>1 D. Sauter</p> <p>2 A. I don't know whether we had access</p> <p>3 to those memos, but I didn't – I wasn't able</p> <p>4 to speak to Frank Waterhouse, and so I didn't</p> <p>5 know to look for them.</p> <p>6 Q. And neither Mr. Dondero nor</p> <p>7 Mr. Norris nor Mr. Post thought to inform you</p> <p>8 about the NAV star error [sic] because they had</p> <p>9 no idea what the notes related to. Correct?</p> <p>10 A. That's my recollection. That's</p> <p>11 correct.</p> <p>12 Q. Okay. Other than the three to five</p> <p>13 memos that you've just described, are there any</p> <p>14 other documents that you recall reviewing as</p> <p>15 part of your investigation?</p> <p>16 A. No.</p> <p>17 Q. Do you know to whom the memos that</p> <p>18 you've just described were addressed?</p> <p>19 Who were they sent to?</p> <p>20 A. I believe there was one that was</p> <p>21 sent to the board.</p> <p>22 And then the others, I think, were</p> <p>23 just either internal communications or</p> <p>24 communications with the SEC.</p> <p>25 Q. Can we scroll down to Paragraph 22,</p>	Page 46	<p>1 D. Sauter</p> <p>2 please.</p> <p>3 Actually, look at Paragraph 21</p> <p>4 first.</p> <p>5 According to Paragraph 21, as part</p> <p>6 of the second phase of your investigation, you</p> <p>7 spoke with Mr. Waterhouse and Mr. Mabry.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you speak with anybody else as</p> <p>11 part of the second phase of your investigation?</p> <p>12 A. Yes, I would have spoken with Jason</p> <p>13 Post and Dustin Norris.</p> <p>14 Q. And is it fair to say based on the</p> <p>15 second phase of your – withdrawn.</p> <p>16 Is it fair to say that your</p> <p>17 conclusions that resulted from the second phase</p> <p>18 of your investigation are set forth in</p> <p>19 Paragraph 22?</p> <p>20 A. (Reviewing document.)</p> <p>21 I wouldn't say all of my</p> <p>22 conclusions. But yes, that's some of them.</p> <p>23 Q. Okay. Is it fair to say that, based</p> <p>24 on the second phase of your investigation, you</p> <p>25 concluded, among other things, "that the notes</p>	Page 47
<p>1 D. Sauter</p> <p>2 were signed by mistake by Waterhouse without</p> <p>3 authority from HCMFA"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Let's talk about your</p> <p>6 discussions with Mr. Waterhouse as part of your</p> <p>7 investigation.</p> <p>8 How many times did you speak with</p> <p>9 him?</p> <p>10 A. Probably three.</p> <p>11 Q. And was anybody else present for any</p> <p>12 of the three conversations?</p> <p>13 A. I don't recall. I don't think so.</p> <p>14 Q. Did you take any notes of your</p> <p>15 conversations with Mr. Waterhouse?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall whether you sent</p> <p>18 anybody any e-mails summarizing your</p> <p>19 conversations with Mr. Waterhouse?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did the three conversations take</p> <p>22 place in person, on the phone or some mix</p> <p>23 thereof?</p> <p>24 A. I think it would have been a mix</p> <p>25 thereof.</p>	Page 48	<p>1 D. Sauter</p> <p>2 Q. Do you recall which of the three</p> <p>3 conversations was the longest, which was the</p> <p>4 shortest?</p> <p>5 I just want to get a sense of how</p> <p>6 much time you spent with Mr. Waterhouse.</p> <p>7 A. I don't, because again, there was</p> <p>8 lots going on.</p> <p>9 The first one was in the conference</p> <p>10 room on the 11th floor at NexBank. The second</p> <p>11 one was in his office. And I think the third</p> <p>12 was on a phone call.</p> <p>13 Q. Did any of them last more than ten</p> <p>14 minutes?</p> <p>15 A. I can't say for certain.</p> <p>16 I would think so, but...</p> <p>17 Q. Okay. Did you show Mr. Waterhouse</p> <p>18 either of the notes as part of either of these</p> <p>19 three interviews?</p> <p>20 A. I don't recall if I did.</p> <p>21 But he knew – he knew the notes.</p> <p>22 Q. And what did he say to you that led</p> <p>23 you to believe that he knew the notes?</p> <p>24 A. Because he was aware of the notes.</p> <p>25 I...</p>	Page 49

<p>1 D. Sauter</p> <p>2 Q. Did he tell the circumstances</p> <p>3 surrounding the execution of the notes?</p> <p>4 A. Yes.</p> <p>5 Q. What did he tell you?</p> <p>6 A. He said those notes were executed in</p> <p>7 connection with the TerreStar NAV error.</p> <p>8 Q. During your discussions with</p> <p>9 Mr. Waterhouse, did he ever deny signing the</p> <p>10 notes?</p> <p>11 A. No.</p> <p>12 Q. He never told you that he was</p> <p>13 unaware of the existence of the notes, did he?</p> <p>14 A. No.</p> <p>15 Q. In fact, before signing your</p> <p>16 declaration, you believed Mr. Waterhouse in</p> <p>17 fact had signed the notes. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that's why in Paragraph 22 you</p> <p>20 specifically wrote that the notes were signed</p> <p>21 by mistake by Waterhouse. Right?</p> <p>22 A. Yes.</p> <p>23 Q. And you understood at the time you</p> <p>24 signed your declaration that Mr. Waterhouse had</p> <p>25 signed the notes at a time when he was HCMFA's</p>	Page 50	<p>1 D. Sauter</p> <p>2 chief financial officer. Correct?</p> <p>3 A. I don't think I said that, but that</p> <p>4 would have been my assumption.</p> <p>5 Q. Okay. I think if we can – give me</p> <p>6 just one moment. I think I...</p> <p>7 Can we go to Paragraph 29, please.</p> <p>8 You'll see, according to your</p> <p>9 declaration, it says: "Returning to the notes,</p> <p>10 Waterhouse was the chief financial officer of</p> <p>11 both the debtor and the HCMFA during the above</p> <p>12 events and at the time he signed the notes."</p> <p>13 Have I read that correctly?</p> <p>14 A. You did.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 that at the time you signed this declaration</p> <p>17 you believed that Mr. Waterhouse was HCMFA's</p> <p>18 CFO at the time he signed the notes?</p> <p>19 A. It does.</p> <p>20 Q. Okay. During your investigation did</p> <p>21 Mr. Waterhouse ever tell you that he signed the</p> <p>22 notes by mistake?</p> <p>23 A. No.</p> <p>24 Q. Did you ever ask Mr. Waterhouse</p> <p>25 during your investigation whether he signed the</p>	Page 51
<p>1 D. Sauter</p> <p>2 notes by mistake?</p> <p>3 A. I guess I'd like to clarify that</p> <p>4 response, if I may.</p> <p>5 Q. Go right ahead.</p> <p>6 A. I asked Mr. Waterhouse why he would</p> <p>7 have signed it – the notes in his personal</p> <p>8 capacity.</p> <p>9 And his response was, I don't know,</p> <p>10 I didn't prepare them.</p> <p>11 So I don't know if that gives you</p> <p>12 the answer you're looking for, but there was</p> <p>13 some confusion about the execution of those</p> <p>14 notes.</p> <p>15 Q. Okay. Did he say anything else</p> <p>16 that – on the topic of whether signing the</p> <p>17 notes was a mistake?</p> <p>18 A. No.</p> <p>19 Q. Okay. Your declaration doesn't</p> <p>20 disclose what you just described for me.</p> <p>21 Correct?</p> <p>22 A. Not in those exact words, no.</p> <p>23 Q. Is there anything in your</p> <p>24 declaration that suggests that Mr. Waterhouse</p> <p>25 hadn't signed the notes?</p>	Page 52	<p>1 D. Sauter</p> <p>2 A. I don't think there's anything else</p> <p>3 in my declaration from –</p> <p>4 Q. Okay. There's nothing –</p> <p>5 (Simultaneous crosstalk.)</p> <p>6 Q. I apologize.</p> <p>7 A. – from May that would suggest that</p> <p>8 Mr. Waterhouse didn't sign the notes.</p> <p>9 Q. There's nothing in here, in your</p> <p>10 declaration, that states that Mr. Waterhouse</p> <p>11 admitted that he made a mistake in signing the</p> <p>12 notes. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. There's nothing in your declaration</p> <p>15 that suggests that Mr. Waterhouse in fact did</p> <p>16 not sign or did not authorize the signing of</p> <p>17 his signature to these notes. Correct?</p> <p>18 A. Correct, because he told me he did.</p> <p>19 Q. Okay. And Mr. – he told you that</p> <p>20 he had signed the notes. Correct?</p> <p>21 A. Yes.</p> <p>22 He said that he didn't use his</p> <p>23 electronic signature then, and if his signature</p> <p>24 was on them, it would have been his.</p> <p>25 Q. Okay. Mr. Waterhouse never filed</p>	Page 53

<p>1 D. Sauter</p> <p>2 his own declaration in support of HCMFA's</p> <p>3 motion for leave to amend their answer.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. During your investigation did you</p> <p>7 ask Mr. Waterhouse if he had authority to sign</p> <p>8 the notes?</p> <p>9 A. Probably not in those exact words.</p> <p>10 Q. Okay. Did you ask him in form or</p> <p>11 substance whether he was authorized to sign the</p> <p>12 notes?</p> <p>13 A. Yes.</p> <p>14 Q. And what did he say?</p> <p>15 A. I think he – well, his response was</p> <p>16 if he signed them, he was authorized to sign</p> <p>17 them.</p> <p>18 Q. Okay. And Mr. Waterhouse never told</p> <p>19 you that he signed the notes without authority.</p> <p>20 Correct?</p> <p>21 A. He told me that – I asked him if</p> <p>22 Mr. Dondero had approved the notes.</p> <p>23 And I don't think he could recall.</p> <p>24 Q. Okay. Did Mr. Waterhouse ever tell</p> <p>25 you that he signed the notes without authority?</p>	Page 54	Page 55
<p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Are you aware that he</p> <p>4 testified that nobody has ever told him that he</p> <p>5 made a mistake in signing the notes?</p> <p>6 MR. RUKAVINA: Objection, form.</p> <p>7 THE WITNESS: I'm not.</p> <p>8 Q. Are you aware of anybody in the</p> <p>9 world ever telling Mr. Waterhouse that he made</p> <p>10 a mistake in signing the notes?</p> <p>11 A. Yes.</p> <p>12 Q. And who told him that?</p> <p>13 A. Me.</p> <p>14 Q. And when did you tell him that?</p> <p>15 A. When we had this discussion.</p> <p>16 Q. Okay. So it's your testimony that</p> <p>17 you actually told Mr. Waterhouse that he made a</p> <p>18 mistake in signing the notes. Right?</p> <p>19 A. I asked him who had approved these</p> <p>20 notes and what was the process.</p> <p>21 And he said he couldn't give me any</p> <p>22 process. He said the money was transferred,</p> <p>23 and so we signed the notes.</p> <p>24 Q. Okay. But did you tell him that he</p> <p>25 made a mistake?</p>	Page 56	Page 57

<p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. You had no responsibility or</p> <p>4 involvement in how HCMFA reported to GAF.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. But nevertheless, despite having no</p> <p>8 personal knowledge of those issues, you told</p> <p>9 Mr. Waterhouse or implied to Mr. Waterhouse</p> <p>10 that he made a mistake in executing the notes.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. What did Mr. Waterhouse say in</p> <p>14 response?</p> <p>15 A. Not much. He just disagreed.</p> <p>16 Q. Did he just say, I disagree, and</p> <p>17 that's it or did he actually – do you recall</p> <p>18 anything specific that he said?</p> <p>19 A. I think I've already testified he</p> <p>20 said, we transferred the money, so I executed</p> <p>21 the notes. HCMFA didn't have the money to pay</p> <p>22 GAF, and so we transferred it from HCMLP and I</p> <p>23 executed the notes.</p> <p>24 Q. Okay. Your declaration doesn't</p> <p>25 attribute any specific statements to</p>	<p>Page 58</p> <p>1 D. Sauter</p> <p>2 Mr. Waterhouse, does it?</p> <p>3 A. It does not.</p> <p>4 Q. In fact, your declaration is just –</p> <p>5 withdrawn.</p> <p>6 If we can go to Paragraph 30.</p> <p>7 Take a look at Paragraph 30. We'll</p> <p>8 kind of parse it through.</p> <p>9 The first sentence says: "It</p> <p>10 appears clear that Mr. Waterhouse made a</p> <p>11 mistake."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. But again, Mr. Waterhouse never</p> <p>15 admitted to making a mistake. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And this is your – this is a</p> <p>18 conclusion that you're reaching in May of 2021,</p> <p>19 more than two years after the fact. Correct?</p> <p>20 A. Based upon my review of the</p> <p>21 documents and my discussions with Mr. Post and</p> <p>22 Mr. Norris.</p> <p>23 Q. Did you ever have any discussions</p> <p>24 with Mr. Dondero in May of 2021 as you were</p> <p>25 preparing this document?</p>
<p>1 D. Sauter</p> <p>2 A. Did I have any discussions with him</p> <p>3 about this?</p> <p>4 Q. I apologize. That was a bad</p> <p>5 question.</p> <p>6 Did you discuss in May of 2021 the</p> <p>7 issues concerning the notes with Mr. Dondero,</p> <p>8 or was that just part of the initial</p> <p>9 investigation?</p> <p>10 A. I don't recall.</p> <p>11 Q. And then a couple of lines down, you</p> <p>12 say – you wrote: "It appears that</p> <p>13 Mr. Waterhouse assumed incorrectly that the</p> <p>14 funds being paid by the debtor were a loan to</p> <p>15 HCMFA."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ask Mr. Waterhouse if he</p> <p>19 actually made the assumption that you're</p> <p>20 attributing to him?</p> <p>21 A. Yes.</p> <p>22 Q. And did he ever admit that the</p> <p>23 assumption was incorrect?</p> <p>24 A. He did not admit that the assumption</p> <p>25 was incorrect.</p>	<p>Page 60</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Again, that's your own</p> <p>3 conclusion. Is that fair?</p> <p>4 A. That's correct.</p> <p>5 Q. And then you continue on and you</p> <p>6 write: "Third" – withdrawn.</p> <p>7 You write: "Third, it therefore</p> <p>8 appears that Mr. Waterhouse prepared the notes</p> <p>9 for some internal accounting or other purpose</p> <p>10 but without there being actual consideration</p> <p>11 for the notes and without any intention on the</p> <p>12 part of the debtor and HCMFA that there be</p> <p>13 notes or that there be a loan transaction."</p> <p>14 Have I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So did Mr. Waterhouse tell you that</p> <p>17 he prepared the notes for some internal</p> <p>18 accounting or other purpose?</p> <p>19 A. Yes.</p> <p>20 Q. And did he tell you what the purpose</p> <p>21 of the notes was?</p> <p>22 A. Yes.</p> <p>23 He said if he transferred money he</p> <p>24 had to have a note to go with it.</p> <p>25 Q. You state in your declaration:</p>

<p>1 D. Sauter</p> <p>2 "There was no" – withdrawn.</p> <p>3 You state in your declaration that</p> <p>4 there was no "intention on the part of the</p> <p>5 debtor and HCMFA that there be notes or that</p> <p>6 there be a loan transaction."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What's the basis for –</p> <p>10 MR. RUKAVINA: Object to the form.</p> <p>11 I apologize. I apologize, John.</p> <p>12 I apologize, DC.</p> <p>13 I'll just object to the form.</p> <p>14 That's not what this says.</p> <p>15 Go ahead.</p> <p>16 MR. MORRIS: Well, then let me</p> <p>17 restate it if I read it incorrectly.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Mr. Sauter, does the last sentence</p> <p>20 of your Paragraph 30 state, among other things,</p> <p>21 that the notes were prepared "without any</p> <p>22 intention on the part of the debtor and HCMFA</p> <p>23 that there be notes or that there be a loan</p> <p>24 transaction"?</p> <p>25 A. Yes.</p>	Page 62	<p>1 D. Sauter</p> <p>2 Q. What's the basis for your sworn</p> <p>3 statement concerning the debtor's intentions?</p> <p>4 MR. RUKAVINA: Again, I'll object.</p> <p>5 Just so that we're clear, Mr. Sauter</p> <p>6 says "it appears that." He does not say it is</p> <p>7 a fact. He says "it appears that." There is a</p> <p>8 distinction there.</p> <p>9 MR. MORRIS: Okay. You've got your</p> <p>10 objection.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. What's the basis for your statement</p> <p>13 that it appeared the debtor had no intention</p> <p>14 that there would be notes or that there would</p> <p>15 be a loan transaction?</p> <p>16 A. If you're talking about a</p> <p>17 \$7.4 million obligation, I would assume that</p> <p>18 there would be a process internally on who was</p> <p>19 responsible for the payment of the fees for</p> <p>20 the – or the expenses for the NAV error.</p> <p>21 Based upon my discussions with Frank</p> <p>22 Waterhouse, there was no process or the legal</p> <p>23 department was not involved in making a</p> <p>24 determination as to whether there should be</p> <p>25 notes. It was merely a ministerial act that</p>	Page 63
<p>1 D. Sauter</p> <p>2 accounting performed when they transferred the</p> <p>3 funds to pay GAF.</p> <p>4 Q. Is it your testimony as the general</p> <p>5 counsel of Nexpoint that the law department or</p> <p>6 the legal department is involved in every note</p> <p>7 that's executed by one of the Highland</p> <p>8 affiliates?</p> <p>9 MR. RUKAVINA: Object to the form.</p> <p>10 THE WITNESS: I can't answer that.</p> <p>11 Q. Okay. So other than the fact that</p> <p>12 it didn't go past the legal department, do you</p> <p>13 have any other basis for your statement that it</p> <p>14 appears that the debtor had no intention that</p> <p>15 there would be notes?</p> <p>16 A. Yes, there's an internal NAV error</p> <p>17 correction policy that obligates the</p> <p>18 responsible party to pay for it.</p> <p>19 In this case it was HCMLP that made</p> <p>20 the NAV error.</p> <p>21 Q. There's a policy that you're</p> <p>22 referring to?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know when that policy was</p> <p>25 adopted?</p>	Page 64	<p>1 D. Sauter</p> <p>2 A. I don't know for certain.</p> <p>3 But I know there was a policy in</p> <p>4 place as of 2018.</p> <p>5 Q. Okay. Other than the policy, have</p> <p>6 you ever seen any memo written – withdrawn.</p> <p>7 Have you ever seen any document in</p> <p>8 the world that states that HCMLP is responsible</p> <p>9 for the TerreStar NAV error?</p> <p>10 A. I would say the memos that</p> <p>11 acknowledged that there was a mistake.</p> <p>12 Q. And is it your recollection that the</p> <p>13 memos specifically say that HCMLP was</p> <p>14 responsible for the mistake?</p> <p>15 A. No, because the memos were vis-à-vis</p> <p>16 HCMFA and GAF.</p> <p>17 Q. Okay. So let me ask you the</p> <p>18 question again.</p> <p>19 During the course of your two</p> <p>20 investigations, did you ever see a document</p> <p>21 that stated that HCMLP was responsible for the</p> <p>22 TerreStar NAV error?</p> <p>23 A. I don't recall.</p> <p>24 Q. You don't recall seeing one. Is</p> <p>25 that correct?</p>	Page 65

<p>1 D. Sauter</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 A. Can we take a quick break?</p> <p>5 Q. Yeah, now would be perfectly fine.</p> <p>6 Give me just one second before we go</p> <p>7 off the record.</p> <p>8 So it's 2:15 local time. Can we</p> <p>9 limit it to ten minutes, Mr. Sauter?</p> <p>10 A. Yeah, that would be fine.</p> <p>11 Q. Okay. And I would ask that you're</p> <p>12 still under oath, and I would ask that you not</p> <p>13 speak with counsel or communicate with anybody</p> <p>14 about the substance of your deposition.</p> <p>15 Is that fair?</p> <p>16 MR. RUKAVINA: Don't answer that</p> <p>17 question, Mr. Sauter.</p> <p>18 The law is what it is, and we're not</p> <p>19 going to agree to something (audio issue) than</p> <p>20 the law requires.</p> <p>21 MR. MORRIS: Well, then I'm not</p> <p>22 going to take a break. How about that?</p> <p>23 Let's keep going.</p> <p>24 MR. RUKAVINA: No, we're taking a</p> <p>25 break and I'm going to the restroom.</p>	Page 66	<p>1 D. Sauter</p> <p>2 MR. MORRIS: We're not taking a</p> <p>3 break, bud. I'm not –</p> <p>4 (Simultaneous crosstalk.)</p> <p>5 MR. RUKAVINA: We'll be back in ten</p> <p>6 minutes.</p> <p>7 MR. MORRIS: Hey, Davor, I'm going</p> <p>8 to ask your client a question. Okay?</p> <p>9 (Simultaneous crosstalk.)</p> <p>10 MR. RUKAVINA: – but we're not –</p> <p>11 I'm sorry.</p> <p>12 You can ask him afterwards who he's</p> <p>13 talked to and about what, but you don't get to</p> <p>14 tell him that he can't talk to anyone.</p> <p>15 So let's go take a piss break and be</p> <p>16 back in nine minutes.</p> <p>17 MR. MORRIS: Put that on the record.</p> <p>18 (Recess was taken from 2:17 p.m. to</p> <p>19 2:28 p.m.)</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Are you ready to proceed, Mr.</p> <p>22 Sauter?</p> <p>23 A. I am.</p> <p>24 Q. During the break did you speak to</p> <p>25 anybody about the substance of your testimony?</p>	Page 67
<p>1 D. Sauter</p> <p>2 A. I did not.</p> <p>3 Q. Okay. Did you communicate with</p> <p>4 anybody about the substance of your testimony?</p> <p>5 A. I did not.</p> <p>6 Q. I want to stick with the focus on</p> <p>7 the debtor's intent as stated in Paragraph 30.</p> <p>8 Before you prepared your</p> <p>9 declaration, did you spend any time reviewing</p> <p>10 any of the debtor's bankruptcy filings?</p> <p>11 A. Yes.</p> <p>12 Q. And are you aware that throughout</p> <p>13 the bankruptcy the debtor disclosed these notes</p> <p>14 as assets of the estate?</p> <p>15 A. Yes.</p> <p>16 Q. And what documents did you review</p> <p>17 that led you to conclude that the debtor was</p> <p>18 disclosing the notes as assets of the estate?</p> <p>19 Do you recall?</p> <p>20 A. I mean, I would have known it from</p> <p>21 the schedules. I would have known it from your</p> <p>22 complaint.</p> <p>23 Q. Okay. So you reviewed the debtor's</p> <p>24 schedules of assets and liabilities prior to</p> <p>25 the time you signed your declaration. Is that</p>	Page 68	<p>1 D. Sauter</p> <p>2 right?</p> <p>3 A. Well, I didn't review them in</p> <p>4 connection with my preparation of the</p> <p>5 declaration, but yes, I had reviewed them.</p> <p>6 Q. And in reviewing them, did you learn</p> <p>7 that the debtor had in fact carried the notes</p> <p>8 as assets on its balance sheet or on its</p> <p>9 schedules of assets and liabilities?</p> <p>10 MR. RUKAVINA: I'm going to object</p> <p>11 to the form.</p> <p>12 THE WITNESS: I was aware that the</p> <p>13 debtor sought to collect on the note from</p> <p>14 HCMFA, the notes.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are you aware that Mr. Dondero was</p> <p>17 in control of Highland Capital Management, LP</p> <p>18 from at least the date of the bankruptcy filing</p> <p>19 in October 2019 through around January 9th,</p> <p>20 2020?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are you aware that, while</p> <p>23 Mr. Dondero was in control of the debtor during</p> <p>24 that period, that Highland filed statements of</p> <p>25 financial affairs and schedules of assets?</p>	Page 69

<p>1 D. Sauter</p> <p>2 A. Generally, I guess, yes.</p> <p>3 But I'm not aware of a particular</p> <p>4 document called statement of financial affairs.</p> <p>5 Q. Are you aware that while Mr. Dondero</p> <p>6 was in control of Highland during the</p> <p>7 bankruptcy, the debtor filed documents stating</p> <p>8 that the notes were assets of the estate?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. Did you ever, as part of your</p> <p>11 investigation, try to see how the debtor</p> <p>12 treated the notes in its court filings?</p> <p>13 A. I did not, beyond the filing of the</p> <p>14 complaint.</p> <p>15 Q. So you never had a conversation with</p> <p>16 anybody – withdrawn.</p> <p>17 Did you ever ask Mr. Waterhouse how</p> <p>18 the debtor treated the notes in its books and</p> <p>19 records?</p> <p>20 A. No.</p> <p>21 Q. Did you ever ask Mr. Waterhouse how</p> <p>22 HCMFA treated the notes in its books and</p> <p>23 records?</p> <p>24 A. No.</p> <p>25 Q. Have you been following developments</p>	Page 70	<p>1 D. Sauter</p> <p>2 in this particular adversary proceeding?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that both HCMFA and</p> <p>5 Highland disclosed the existence of the notes</p> <p>6 to their outside auditors within 30 days of</p> <p>7 their execution?</p> <p>8 MR. RUKAVINA: Objection, form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 And it's my understanding that's why</p> <p>11 the notes were prepared.</p> <p>12 Q. And what's that understanding based</p> <p>13 on?</p> <p>14 MR. RUKAVINA: And now, Mr. Sauter,</p> <p>15 let's be very careful here.</p> <p>16 Please answer only if it's based on</p> <p>17 factual information that a nonlawyer told you.</p> <p>18 THE WITNESS: Yeah. I believe</p> <p>19 Mr. Waterhouse told me that he needed a note to</p> <p>20 document the transfer of funds.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. But I asked you a different</p> <p>23 question, and that's simply whether or not</p> <p>24 you're aware as you sit here today whether</p> <p>25 HCMFA and Highland disclosed the existence of</p>	Page 71
<p>1 D. Sauter</p> <p>2 the notes to the outside auditors.</p> <p>3 MR. RUKAVINA: I'll object again.</p> <p>4 THE WITNESS: Yes, I am aware.</p> <p>5 Q. Have you ever seen HCMFA's audited</p> <p>6 financial statements?</p> <p>7 A. I don't recall.</p> <p>8 I think you asked me that earlier.</p> <p>9 And I may have seen them, but I don't recall</p> <p>10 specifically.</p> <p>11 Q. Do you recall looking at the audited</p> <p>12 financial statements as part of your</p> <p>13 investigation?</p> <p>14 A. No.</p> <p>15 Q. Let's put up HCMFA's audited</p> <p>16 financial statements for the period ending</p> <p>17 December 31st, 2018. And it's previously been</p> <p>18 marked as Deposition Exhibit 45.</p> <p>19 (Exhibit 45, Consolidated Financial</p> <p>20 Statements and Supplemental Information</p> <p>21 December 31, 2018, D-CNL002273-296, previously</p> <p>22 marked for identification.)</p> <p>23 Q. Do you see the first page there?</p> <p>24 This is the HCMFA consolidated</p> <p>25 financial statements for the period ending</p>	Page 72	<p>1 D. Sauter</p> <p>2 December 31st, 2018.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And I think you said you may have</p> <p>6 seen it before.</p> <p>7 Did I get that wrong?</p> <p>8 A. I said I may have.</p> <p>9 In looking at this, I don't think</p> <p>10 I've ever seen this document.</p> <p>11 Q. Okay. Can we just go to the third</p> <p>12 page and see the date.</p> <p>13 Do you see that this is the report</p> <p>14 of the independent auditors</p> <p>15 PricewaterhouseCoopers?</p> <p>16 A. Yes.</p> <p>17 Q. And you do see it's dated June 3rd,</p> <p>18 2019?</p> <p>19 A. Yes.</p> <p>20 Q. And do you understand that this</p> <p>21 document was prepared by HCMFA's outside</p> <p>22 auditors prior to Highland's bankruptcy filing?</p> <p>23 A. That's what it purports to be.</p> <p>24 Q. Okay. And it also purports to have</p> <p>25 been prepared prior to the commencement of the</p>	Page 73

<p>1 D. Sauter</p> <p>2 adversary proceeding as you understand the</p> <p>3 timing. Correct?</p> <p>4 A. Yep.</p> <p>5 Q. Let's go to Page 17, please.</p> <p>6 Do you see there's a section in the</p> <p>7 audited financial statements called Subsequent</p> <p>8 Events?</p> <p>9 A. Yep.</p> <p>10 Q. Do you have any understanding as to</p> <p>11 what a Subsequent Events section is in audited</p> <p>12 financial statements?</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding of what</p> <p>15 that section is supposed to include?</p> <p>16 A. It's intended to pick up events that</p> <p>17 occurred after the date of the financials but</p> <p>18 prior to the date the financials are</p> <p>19 executed – or issued.</p> <p>20 Q. And do you see in the second</p> <p>21 paragraph there's a description of the two</p> <p>22 notes?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. You were not aware that the</p> <p>25 two notes were included in HCMFA's audited</p>	Page 74	<p>1 D. Sauter</p> <p>2 financial statements for – as subsequent</p> <p>3 events at the time you executed your</p> <p>4 declaration. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. Now that you know that, do you think</p> <p>7 HCMFA made a mistake in including these notes</p> <p>8 in the audited financial statements, or does it</p> <p>9 cause you to reconsider your conclusion that</p> <p>10 the issuance of the notes was a mistake?</p> <p>11 MR. RUKAVINA: I'll object to that</p> <p>12 question based on form.</p> <p>13 THE WITNESS: You're asking me for</p> <p>14 my legal conclusion?</p> <p>15 Q. No, I'm not actually, but it</p> <p>16 probably wasn't a great question.</p> <p>17 So your conclusion was that the</p> <p>18 execution of the notes was a mistake. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. But HCMFA is reporting the notes as</p> <p>21 part of its audited financial statements.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And do you understand that these</p> <p>25 financial statements have been audited by</p>	Page 75
<p>1 D. Sauter</p> <p>2 independent – an independent outside firm</p> <p>3 called PricewaterhouseCoopers?</p> <p>4 A. I assume they're audited financials.</p> <p>5 And yes, what you've shown me, it</p> <p>6 appears as though they were prepared by</p> <p>7 PricewaterhouseCoopers.</p> <p>8 Q. Okay. Would you agree with me that</p> <p>9 it's inconsistent that the notes can't be both</p> <p>10 a mistake and be reported as valid obligations</p> <p>11 in the audited financial statements?</p> <p>12 MR. RUKAVINA: I'll object.</p> <p>13 This witness is not an expert. He</p> <p>14 has no personal knowledge. This is well</p> <p>15 outside the scope of his factual investigation</p> <p>16 in May of 2021.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. You can answer, sir.</p> <p>19 A. I would agree that the two</p> <p>20 statements are at odds with one another.</p> <p>21 Q. Okay. So I'm just asking you</p> <p>22 whether – now that you know that HCMFA</p> <p>23 included these in the audited financial</p> <p>24 statements, does that cause you to question at</p> <p>25 all your conclusion that the execution of the</p>	Page 76	<p>1 D. Sauter</p> <p>2 notes was a mistake?</p> <p>3 MR. RUKAVINA: I'll again object.</p> <p>4 This witness is not an expert. He's</p> <p>5 not going to be a trial expert. And a motion</p> <p>6 to amend has already been agreed upon and ruled</p> <p>7 upon.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. You can answer, sir.</p> <p>10 A. I would say that the audited</p> <p>11 financials were prepared by</p> <p>12 PricewaterhouseCoopers with input from the</p> <p>13 accounting team.</p> <p>14 And as I stated previously, I think</p> <p>15 there was an – a breakdown in the process that</p> <p>16 should have occurred, and had others looked at</p> <p>17 this, they wouldn't have come to the same</p> <p>18 conclusion.</p> <p>19 Q. So do you believe, based on the</p> <p>20 investigation that you did, that a second</p> <p>21 mistake occurred not only in signing the notes</p> <p>22 but including them in the audited financial</p> <p>23 statements?</p> <p>24 MR. RUKAVINA: Again, I'll object.</p> <p>25 This witness is not an expert. He</p>	Page 77

<p>1 D. Sauter 2 has no personal knowledge. 3 THE WITNESS: Yeah, I can't tell you 4 whether that's a mistake. 5 My experience is that generally 6 accounting folks internally said that. 7 So if the accounting folks made a 8 determination that the notes should be included 9 as a subsequent event, then the auditors would 10 include it as a subsequent event. 11 BY MR. MORRIS: 12 Q. Okay. Do you know, is there anybody 13 at HCMFA who's responsible for overseeing the 14 preparation of the audited financial 15 statements? 16 A. I think Mr. Waterhouse. 17 Q. When did you first learn that the 18 notes had been included in the financial 19 statements? 20 Are you learning that for the first 21 time right now or did you know that before 22 today? 23 A. I think I heard that a couple weeks 24 ago. 25 MR. RUKAVINA: Let's be careful here</p>	<p>Page 78</p> <p>1 D. Sauter 2 again, Mr. Sauter, to exclude our 3 communications, please. 4 THE WITNESS: Okay. 5 Q. Do you know if HCMFA ever reached 6 out to PricewaterhouseCoopers to inform them 7 that their audited financial statements were 8 incorrect? 9 A. I don't know. 10 Q. Do you know whether the debtor 11 included reference to the notes in its audited 12 financial statements? 13 A. I don't. 14 Q. Let's go back to your declaration, 15 please, Paragraph 28. 16 Okay. So Paragraph 28 says: "The 17 debtor accepted responsibility to HCMFA for 18 having caused the NAV error, and the debtor 19 ultimately, whether through insurance or its 20 own funds, compensated HCMFA for the above 21 payments." 22 Have I read that correctly? 23 A. Correct. 24 Q. Paragraph 28 doesn't cite any source 25 for that statement. Right?</p>	Page 79
<p>1 D. Sauter 2 A. Correct. 3 Q. Okay. You don't attribute that 4 statement to any particular person. Correct? 5 A. That's correct. 6 Q. What is the basis for your statement 7 that the debtor accepted responsibility to 8 HCMFA? 9 A. It would be that the debtor's 10 employees who performed the valuation function 11 acknowledged that they had made a mistake. 12 Q. And who are those employees? 13 A. Well, ultimately I don't know 14 exactly who it was that came to that 15 determination, but I think it was Frank 16 Waterhouse and Thomas Surgent. 17 Q. Did you ever interview Mr. Surgent 18 as part of your investigation? 19 A. No, I was prohibited from speaking 20 with him. 21 Q. So you're not aware of 22 Mr. Waterhouse ever saying that the debtor 23 accepted responsibility – withdrawn. 24 You're not aware of Mr. Surgent – 25 withdrawn.</p>	<p>Page 80</p> <p>1 D. Sauter 2 You have no personal knowledge that 3 Mr. Surgent accepted, on behalf of the debtor, 4 responsibility for the NAV error. Correct? 5 A. I have no personal knowledge of 6 that, correct. 7 Q. Okay. And did Mr. Waterhouse tell 8 you that the debtor accepted responsibility to 9 HCMFA for having caused the NAV error? 10 A. I think Mr. Waterhouse said that the 11 HCMLP employees who formed the valuation 12 committee ultimately concluded that they had 13 made a mistake and they needed to accept that. 14 Q. Okay. It doesn't say that in your 15 declaration, does it? 16 A. Doesn't say what? 17 Q. That Mr. Waterhouse told you that. 18 A. No. 19 Q. In fact, is there any particular 20 reason why you didn't share that with the 21 court? 22 A. No. 23 Q. Is there anything in writing that 24 you've ever seen which states that the debtor 25 accepts responsibility to HCMFA for having</p>	Page 81

<p>1 D. Sauter 2 caused the NAV error? 3 A. Other than what I've identified, no. 4 Q. And what you've identified is that 5 policy. Is that right? 6 A. There's a policy and the 7 acknowledgment that the NAV error was made by 8 the HCMLP employees who were on the valuation 9 committee. 10 Q. Okay. You're aware that shortly 11 after HCMFA paid the \$7.4 million to the fund, 12 HCMFA sent the fund a written report. Is that 13 right? 14 A. Yes. 15 Q. Let's take a look at that, if we can 16 put that on the screen. 17 MS. CANTY: Sorry, John, you went 18 out for a second. 19 Can you say that again. 20 MR. MORRIS: Yeah. 21 If you could, I think – I think I 22 had it listed as Exhibit 37, but it's one of 23 the new ones. It's the memo, I think, from 24 HCMFA to the funds. 25 MS. CANTY: Got it.</p>	Page 82	<p>1 D. Sauter 2 (Exhibit 182, Memo dated 5/28/19, 3 previously marked for identification.) 4 BY MR. MORRIS: 5 Q. Is this one of the memos that – and 6 again, Mr. Sauter, if you need to see more of 7 it, just let me know. 8 But is this one of the memos that 9 you saw as part of your investigation? 10 A. I believe so. 11 Q. Okay. And do you understand that 12 this is a memo from HCMFA to the board of the 13 Highland Global Allocation Fund? 14 A. Yes. 15 Q. And this is where HCMFA describes 16 for the board the resolution of the NAV error. 17 Correct? 18 A. Correct. 19 Q. Okay. And did you discuss this memo 20 with anybody as part of your investigation? 21 A. I mean, other than reviewing it, no. 22 Q. So – and how did you obtain a copy 23 of it? 24 A. Mr. Post. 25 Q. So Mr. Post gave it to you.</p>	Page 83
<p>1 D. Sauter 2 But you didn't speak with him about 3 it in substance. Correct? 4 A. I mean, I spoke to him about the 5 transaction and the mistake. 6 I did the same thing with Dustin 7 Norris. 8 Q. Okay. But you didn't speak with 9 anybody about the substance of this memo. 10 Correct? 11 A. Correct. 12 Q. Okay. And – but you did see this 13 memo before you signed your declaration. 14 Correct? 15 A. Yes. 16 Q. Okay. And do you have an 17 understanding of what this memo is? 18 A. Yeah. 19 I'd like to take a – I'd like to 20 see the memo in full. 21 Q. Sure. Take your time. 22 So just tell Ms. Carty when you want 23 to see more and then she'll scroll. 24 Okay. Stop right there. 25 A. (Reviewing document.)</p>	Page 84	<p>1 D. Sauter 2 Yes. Okay. 3 Q. So then the second page is this NAV 4 error breakdown. 5 Do you see that? 6 A. Yes. 7 Q. All right. We'll come to that, but 8 let's go back to the first page. 9 Have you taken a look at the second 10 paragraph there that begins: "The advisor and 11 Houlihan Lokey, an independent third party 12 expert valuation consultant approved by the 13 board," have you read that paragraph? 14 A. Yes. 15 Q. Okay. To the best of your 16 knowledge, did HCMFA accurately define "NAV 17 error" for the board in that paragraph? 18 MR. RUKAVINA: Objection – 19 THE WITNESS: As far as I know, yes. 20 MR. RUKAVINA: This witness is not 21 an expert and has no personal knowledge. 22 Q. Do you have any reason to believe 23 that HCMFA did not accurately describe for the 24 board the definition of "NAV error"?</p>	Page 85

<p>1 D. Sauter</p> <p>2 Q. Do you have any reason to believe --</p> <p>3 take a look at the last sentence.</p> <p>4 "The orderly determination and</p> <p>5 adoption of the weighted fair valuation</p> <p>6 methodology resulted in NAV errors in the</p> <p>7 fund."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that's what's being defined as</p> <p>11 the NAV error. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any reason to believe</p> <p>14 that that sentence is false or misleading in</p> <p>15 any way?</p> <p>16 A. I do not.</p> <p>17 Q. Nothing you uncovered during your</p> <p>18 investigation caused you to believe that that</p> <p>19 sentence was false or misleading in any way.</p> <p>20 Correct?</p> <p>21 A. No.</p> <p>22 Q. Okay. And the advisor was the</p> <p>23 entity that made the orderly determination.</p> <p>24 Correct?</p> <p>25 A. That's what this memo says.</p>	Page 86	Page 87
<p>1 D. Sauter</p> <p>2 A. I – I don't know.</p> <p>3 Q. Do you know whether anybody ever</p> <p>4 suggested that Houlihan Lokey was responsible</p> <p>5 for the valuation error?</p> <p>6 A. I don't.</p> <p>7 Q. Did you ever ask anybody if Houlihan</p> <p>8 Lokey was responsible for the valuation error?</p> <p>9 A. No.</p> <p>10 Q. Do you know if – to the best of</p> <p>11 your knowledge, this memo was given to the</p> <p>12 board by HCMFA. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. Did – having reviewed the memo, is</p> <p>15 there anything that you're aware of in this</p> <p>16 memo where HCMFA tells the board that HCMLP is</p> <p>17 responsible for the NAV error?</p> <p>18 A. No.</p> <p>19 And I don't think that they would.</p> <p>20 It would be irrelevant.</p> <p>21 MR. MORRIS: I move to strike the</p> <p>22 latter portion of the answer.</p> <p>23 Q. Let's take a look at the bottom</p> <p>24 paragraph there.</p> <p>25 Do you see that there's a reference</p>	Page 88	Page 89

<p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Who told you that?</p> <p>4 A. Mr. Waterhouse.</p> <p>5 Q. Okay. Do you know what the source</p> <p>6 was – hold on one second.</p> <p>7 And do you know what the source of</p> <p>8 the second payment was, that \$2.4 million on</p> <p>9 May 2nd, 2019?</p> <p>10 A. HCMLP.</p> <p>11 Q. Now, we saw earlier that one of the</p> <p>12 notes was for \$2.4 million on May 2nd.</p> <p>13 Do you recall that?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Okay. So is it fair – did you</p> <p>16 conclude as part of your investigation that at</p> <p>17 least the amount and the date of the payment</p> <p>18 matched the amount and the date of the note?</p> <p>19 A. I did on the second note, yes.</p> <p>20 Q. Okay. But the – neither the amount</p> <p>21 nor the date of the first payment matched the</p> <p>22 amount or the date of the second note.</p> <p>23 Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Let's take a look at the second</p>	Page 90	Page 91
<p>1 D. Sauter</p> <p>2 A. That's what it appears to show.</p> <p>3 Q. And during your investigation, were</p> <p>4 you aware that HCMFA had obtained almost</p> <p>5 \$5 million in connection with the NAV error</p> <p>6 that it was using to fund the payment to GAF?</p> <p>7 A. I subsequently learned that, yes.</p> <p>8 Q. And were you aware prior to the time</p> <p>9 that you signed your declaration – I apologize</p> <p>10 if I asked this before – withdrawn.</p> <p>11 Were you aware of the almost</p> <p>12 \$5 million in insurance proceeds that was –</p> <p>13 that were obtained by HCMFA before you signed</p> <p>14 your declaration?</p> <p>15 A. I was not.</p> <p>16 Q. So that's new information for you</p> <p>17 since the time you signed your declaration?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Were you aware at the time</p> <p>20 you signed your declaration that HCMFA had paid</p> <p>21 an insurance deductible of almost \$250,000?</p> <p>22 A. I was not.</p> <p>23 Q. Is it your understanding that after</p> <p>24 the sources described in the top portion of</p> <p>25 this page, that the total amount needed by the</p>	Page 92	Page 93

<p>1 D. Sauter</p> <p>2 believe that the source of the funding is</p> <p>3 anything other than what's set forth on this</p> <p>4 page?</p> <p>5 A. I don't.</p> <p>6 Q. And the \$2.4 million, that's the</p> <p>7 \$2.4 million that HCMFA obtained from Highland</p> <p>8 on May 2nd. Correct?</p> <p>9 MR. RUKAVINA: Objection.</p> <p>10 The witness is not qualified to</p> <p>11 answer that.</p> <p>12 Q. During the course of your</p> <p>13 investigation, did you learn that Highland</p> <p>14 transferred \$2.4 million to HCMFA on May 2nd,</p> <p>15 2019 so that it could pay GAF?</p> <p>16 A. That's what I was told.</p> <p>17 Q. Okay. Is it your conclusion that</p> <p>18 Highland was responsible for the \$7.44 million</p> <p>19 estimated net loss resulting from the NAV</p> <p>20 error?</p> <p>21 MR. RUKAVINA: Objection.</p> <p>22 This witness is not an expert, and</p> <p>23 he has no personal knowledge.</p> <p>24 THE WITNESS: Yes, I believe that</p> <p>25 that's accurate.</p>	Page 94	Page 95
<p>1 D. Sauter</p> <p>2 as a loan. Correct?</p> <p>3 A. I didn't say negligent, and I don't</p> <p>4 know that I can make that conclusion.</p> <p>5 But it should have been indemnity</p> <p>6 and reimbursement for the error that Highland</p> <p>7 created.</p> <p>8 Q. Okay. Can you tell me why HCMFA</p> <p>9 took \$5 million from an insurance company at</p> <p>10 the same time it was being made whole by</p> <p>11 Highland?</p> <p>12 MR. RUKAVINA: I'll instruct you not</p> <p>13 to answer that.</p> <p>14 That is attorney client privileged</p> <p>15 and work product.</p> <p>16 Q. Sir, as part of your investigation,</p> <p>17 did you make any assessment as to why HCMFA</p> <p>18 accepted \$5 million in proceed – in insurance</p> <p>19 proceeds at the same time it believed that the</p> <p>20 \$7.4 million was being paid by Highland as</p> <p>21 compensation?</p> <p>22 MR. RUKAVINA: Just want to make</p> <p>23 sure, Mr. Sauter, you understand that counsel</p> <p>24 is asking about your investigation in May of</p> <p>25 this year as referenced in your declaration and</p>	Page 96	Page 97

<p>1 D. Sauter 2 allowed to ask him if it changes his 3 conclusion. 4 MR. RUKAVINA: Let me just explain 5 what I understand, what's going on here. 6 He undertook an evidentiary and 7 factual conclusion, which is fair game for you 8 to ask about. Pardon me. 9 He's told you that he didn't know 10 about this. His declaration says – I'm 11 paraphrasing – it appears that there was a 12 mistake. 13 He has never claimed to have 14 personal knowledge. He has never claimed to be 15 an expert. He is not going to be a trial 16 witness. He has never testified and is not 17 testifying today that there was a mistake. 18 But most importantly, and why I'm 19 instructing him not to answer, is because the 20 issue of how this payment relates to the 21 insurance payable, which again arose after his 22 declaration and is something that he and I have 23 discussed and is my work product. That is not 24 a part of his factual investigation. 25 So I am instructing him not to</p>	<p>Page 98</p> <p>1 D. Sauter 2 answer. There's no point in you and I arguing 3 about it now. 4 If you feel my objection is 5 inappropriate, then you have your rights 6 intact. 7 MR. MORRIS: All right. I'm going 8 to continue to ask questions. 9 BY MR. MORRIS: 10 Q. Sir, you had this document before 11 you signed your declaration. Correct? 12 A. I did. 13 Q. Okay. And your conclusion was that 14 because Highland made the NAV mistake, the 15 \$7.4 million payment was supposed to be 16 compensation and not in the form of a loan. 17 Correct? 18 MR. RUKAVINA: Objection, form. 19 THE WITNESS: Correct. 20 Q. Okay. And now the document that you 21 had before you signed your declaration 22 discloses that HCMFA received almost \$5 million 23 as part of the insurance proceeds in connection 24 with the NAV error. Correct? 25 A. Yes.</p>	<p>Page 99</p>
<p>1 D. Sauter 2 Q. Okay. Does that cause you to change 3 the conclusion that you reached as set forth in 4 your declaration? 5 A. I don't know enough about the 6 insurance proceeds, the insurance policy and 7 what transpired at the time to make that 8 determination. 9 Q. Do you know if HCMFA has ever 10 informed the insurance carrier that HCMLP was 11 responsible for the NAV error? 12 A. I do not. 13 Q. Did you ever ask anybody? 14 A. I did not. 15 Q. As part of your investigation, did 16 you try to determine whether HCMFA ever told 17 the insurance company that HCMLP was 18 responsible for the NAV error? 19 A. I think I already said I wasn't 20 aware of the insurance proceeds at the time of 21 my declaration. 22 Q. Has HCMFA returned all or any 23 portion of the insurance proceeds to the 24 carrier? 25 A. I wouldn't know.</p>	<p>Page 100</p> <p>1 D. Sauter 2 Q. Have you ever asked anybody? 3 A. No. 4 MR. RUKAVINA: You've got to wait a 5 second, Mr. Sauter, before answering. 6 Go ahead. 7 Q. During the course of your 8 investigation, did anybody tell you that on 9 May 3rd, 2019, HCMFA needed another \$5 million? 10 A. Not during the course of my initial 11 investigation. 12 Q. Are you aware of that today? 13 A. I am, yes. 14 Q. Okay. And do you understand that 15 that \$5 million was needed in order for HCMFA 16 to pay what's called a consent fee? 17 MR. RUKAVINA: I'm going to object. 18 And I'm going to instruct the 19 witness not to answer. 20 Again, this is attorney-client 21 privilege and work product. 22 He learned about all of this well 23 after his investigation and well after his 24 declaration. 25 MR. MORRIS: These are facts.</p>	<p>Page 101</p>

<p>1 D. Sauter</p> <p>2 I don't get it. These are facts.</p> <p>3 And I'm not limited to his declaration. He's</p> <p>4 here under a subpoena. I can ask him whatever</p> <p>5 I want factually.</p> <p>6 I don't understand, Davor.</p> <p>7 MR. RUKAVINA: Well, there's three</p> <p>8 things.</p> <p>9 You're generally right, you can ask</p> <p>10 him whatever you want factually. I'm not</p> <p>11 saying that he – I haven't prevented you from</p> <p>12 asking factually. That's issue one.</p> <p>13 Issue two, he's not a trial witness.</p> <p>14 His role is limited to the motion to amend,</p> <p>15 which was granted by consent.</p> <p>16 And issue three, the question you're</p> <p>17 asking him right now, if he has any knowledge,</p> <p>18 he can have only through discussions with me</p> <p>19 and things he's learned through me in this</p> <p>20 litigation. He's told you he did not know</p> <p>21 about this during his investigation.</p> <p>22 So I'm going to stick by my</p> <p>23 instruction not to answer that, Mr. Sauter.</p> <p>24 MR. MORRIS: And I'm going to tell</p> <p>25 you he is a trial witness. I will certainly be</p>	Page 102	Page 103
<p>1 D. Sauter</p> <p>2 Q. Did you ever have – withdrawn.</p> <p>3 Did anybody ever tell you that</p> <p>4 Highland was responsible for any consent fee</p> <p>5 that HCMFA paid?</p> <p>6 MR. RUKAVINA: You're instructed not</p> <p>7 to answer that to the extent that whoever told</p> <p>8 you that would be an attorney.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Did anybody other than an</p> <p>11 attorney ever tell you that Highland was</p> <p>12 responsible for any consent fee ever paid by</p> <p>13 HCMFA?</p> <p>14 A. That Highland was responsible for</p> <p>15 paying a consent fee?</p> <p>16 Q. That Highland was responsible for</p> <p>17 any consent fee that was paid by HCMFA.</p> <p>18 A. I don't believe so.</p> <p>19 Q. During your discussions as part of</p> <p>20 your investigation with Mr. Norris and Mr. Post</p> <p>21 and Mr. Dondero and Mr. Waterhouse, did anybody</p> <p>22 tell you why Highland paid HCMFA \$5 million on</p> <p>23 May 3rd, 2019?</p> <p>24 A. Yes.</p> <p>25 Q. And why did – what did they tell</p>	Page 104	Page 105

<p>1 D. Sauter</p> <p>2 after you learned from Mr. Norris that the</p> <p>3 \$5 million was paid so that HCMFA could pay the</p> <p>4 consent fee, did you follow up with</p> <p>5 Mr. Waterhouse at all?</p> <p>6 A. I didn't know about the consent fee</p> <p>7 at the time of my investigation.</p> <p>8 Q. Okay. When did Mr. Norris tell you</p> <p>9 about the consent fee?</p> <p>10 A. Probably within the last six weeks.</p> <p>11 Q. And does learning about the consent</p> <p>12 fee from Mr. Norris cause you to question your</p> <p>13 conclusion that the \$7.4 million was paid by</p> <p>14 Highland to HCMFA on account of the mistake</p> <p>15 that Highland made on the NAV error?</p> <p>16 MR. RUKAVINA: I'll again object</p> <p>17 that this witness is not an expert and he has</p> <p>18 no personal knowledge.</p> <p>19 Q. You can answer, sir.</p> <p>20 A. I wasn't aware of the consent fee.</p> <p>21 I don't know much about the consent</p> <p>22 fee. I don't know what it is, who paid it, why</p> <p>23 they paid it, what the consideration was for</p> <p>24 it.</p> <p>25 So I'm not prepared to answer that.</p>	Page 106	<p>1 D. Sauter</p> <p>2 Q. Okay. Let's go back to your</p> <p>3 declaration, please, Paragraph 31.</p> <p>4 Is it fair to summarize this</p> <p>5 paragraph as saying that because HCMFA and the</p> <p>6 debtor had executed that acknowledgment, that</p> <p>7 it would have been illogical for Highland to</p> <p>8 lend HCMFA \$7.4 million in May 2021?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what was the source of</p> <p>11 your information for Paragraph 31?</p> <p>12 A. I'm not sure I follow.</p> <p>13 Q. So you've got the acknowledgment</p> <p>14 that you attached as Exhibit 4. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you discuss with anybody during</p> <p>17 your investigation any of the facts or</p> <p>18 conclusions that are set forth in Paragraph 31</p> <p>19 or did you – or is it based just on your</p> <p>20 review of Exhibit 4?</p> <p>21 A. Based on my review.</p> <p>22 Q. Okay. Are you aware that in</p> <p>23 May 2019, Mr. Dondero contemporaneously and</p> <p>24 personally paid Highland exactly \$7.4 million</p> <p>25 that was owed by Mr. Dondero to Highland under</p>	Page 107
<p>1 D. Sauter</p> <p>2 a promissory note where he was the maker?</p> <p>3 A. I was not.</p> <p>4 Q. Nobody told you that as part of your</p> <p>5 investigation, that the way Highland was able</p> <p>6 to transfer the \$7.4 million to HCMFA was to</p> <p>7 get that money from Mr. Dondero on account of a</p> <p>8 note that he signed?</p> <p>9 A. No one told me that.</p> <p>10 Q. You're hearing that for the first</p> <p>11 time today?</p> <p>12 A. I am.</p> <p>13 Q. If Mr. Dondero paid down</p> <p>14 \$7.4 million in obligations that he owed to</p> <p>15 Highland, would it change your view that it was</p> <p>16 illogical for Highland to loan that money to</p> <p>17 HCMFA in May of 2019?</p> <p>18 A. Again, without seeing the documents</p> <p>19 and the timing and the details of the</p> <p>20 transaction, I can't answer that.</p> <p>21 Q. Okay. Now, the advisors have</p> <p>22 contracts with the funds they advise. Correct?</p> <p>23 A. Advisory agreements, yes.</p> <p>24 Q. And those advisory agreements are</p> <p>25 subject to annual renewal. Correct?</p>	Page 108	<p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. As Nexpoint's general counsel, did</p> <p>4 you participate in the annual renewal process</p> <p>5 in the fall of 2020?</p> <p>6 A. I would have participated in the</p> <p>7 process, but only with respect to NXRT,</p> <p>8 Nexpoint Residential Trust and Nexpoint Real</p> <p>9 Estate Finance.</p> <p>10 Q. I see.</p> <p>11 A. I had some limited involvement in</p> <p>12 the 15(c) process with respect to Nexpoint's</p> <p>13 strategic opportunities fund, but very limited.</p> <p>14 Q. Do you know who the representative</p> <p>15 was for HCMFA who was responsible for the 15(c)</p> <p>16 annual renewal process in the fall of 2020?</p> <p>17 A. I don't.</p> <p>18 I can speculate, and I would assume</p> <p>19 it's Mr. – a combination of Mr. Norris and</p> <p>20 Mr. Sella (phonetic).</p> <p>21 Q. And why do you speculate that it's a</p> <p>22 combination of them?</p> <p>23 A. Because they were actively involved</p> <p>24 in the process just from conversations I had</p> <p>25 with them.</p>	Page 109

<p>1 D. Sauter</p> <p>2 Q. Okay. Have you ever seen any of the</p> <p>3 reports that the advisors sent to the retail</p> <p>4 board in connection with the 15(c) annual</p> <p>5 review?</p> <p>6 MR. RUKAVINA: Now, this one,</p> <p>7 Mr. Sauter, I am going to instruct you not to</p> <p>8 answer.</p> <p>9 MR. MORRIS: Have you ever seen the</p> <p>10 document? That's what, you're going to</p> <p>11 instruct him not to --</p> <p>12 MR. RUKAVINA: Don't answer that.</p> <p>13 Don't answer that. That relates to discovery</p> <p>14 and work product privilege.</p> <p>15 The document was produced to you.</p> <p>16 Mr. Sauter helped me find that document. Other</p> <p>17 than that, nothing about that document and his</p> <p>18 knowledge is fair game.</p> <p>19 MR. MORRIS: Well, I'm going to ask</p> <p>20 my questions, and you can keep directing him</p> <p>21 not to answer.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, have you ever seen any</p> <p>24 of the reports that were issued by the advisors</p> <p>25 to the funds?</p>	Page 110	Page 111
<p>1 D. Sauter</p> <p>2 A. Could you scroll down.</p> <p>3 Q. Sure.</p> <p>4 A. (Reviewing document.)</p> <p>5 Q. We can keep going.</p> <p>6 A. All right.</p> <p>7 What's the date on this?</p> <p>8 Q. October 23rd, 2020.</p> <p>9 A. I honestly don't think I would have</p> <p>10 been involved in that or seen that.</p> <p>11 Q. Okay. Did you ever ask anybody as</p> <p>12 part of your investigation -- withdrawn.</p> <p>13 Are you aware that the advisors were</p> <p>14 asked to provide information to the retail</p> <p>15 board as to the obligations that it owed to</p> <p>16 Highland and its affiliates in connection with</p> <p>17 the 15(c) annual review?</p> <p>18 A. I was not.</p> <p>19 Q. So is it fair to say that you never</p> <p>20 saw this document as part of your</p> <p>21 investigation?</p> <p>22 A. I don't think so.</p> <p>23 Q. Is it fair to say that nobody ever</p> <p>24 told you about the advisors' responses to the</p> <p>25 retail board in connection with the 15(c)</p>	Page 112	Page 113

<p>1 D. Sauter 2 mistake. 3 Do I have that right? 4 A. Yes. 5 Q. Okay. What does "mutual" – excuse 6 me – what does "mutual mistake" mean? 7 MR. RUKAVINA: Are you asking for 8 his legal opinion or how he used it in this 9 declaration? 10 MR. MORRIS: Only how he used it in 11 the declaration. 12 THE WITNESS: Well, wouldn't that be 13 a legal conclusion because it's an affirmative 14 defense? 15 BY MR. MORRIS: 16 Q. Well, I don't know. It's in your 17 declaration. I'm just asking you what you 18 meant when you used the phrase – withdrawn. 19 Let me ask a better question. Maybe 20 it's my fault. 21 Mr. Sauter, what did you mean when 22 you used the phrase "mutual mistake"?</p> <p>23 A. What I meant is that there was no 24 analysis or consideration of what had 25 transpired and who is legally responsible for</p>	Page 114	<p>1 D. Sauter 2 the payments to the fund. 3 A transfer was made. A note was 4 executed without any analysis. 5 Q. And do you have anything else to add 6 to that? 7 A. I don't think so. 8 Q. Okay. You also say that the notes 9 are void for lack of consideration. 10 Do I have that right? 11 A. Yes. 12 Q. You don't dispute that Highland paid 13 HCMFA \$2.4 million on May 2nd, 2019. Correct? 14 A. No. 15 Q. And you don't dispute that Highland 16 paid HCMFA \$5 million on May 3rd, 2019. 17 Correct? 18 A. I mean, I believe that's right. 19 That's what I've been told. 20 So yeah, I don't dispute that. 21 Q. Your reference to "a lack of 22 consideration" means only that, in your 23 opinion, the money should not have been 24 transferred in the form of a loan. 25 Do I have that right?</p>	Page 115
<p>1 D. Sauter 2 A. You do. 3 Q. It does not mean that HCMFA did not 4 receive an amount of money exactly equal to the 5 principal amount of the notes. Correct? 6 A. Based upon what I've been told, 7 correct. 8 Q. Okay. You also write here that 9 Mr. Waterhouse did not "have proper authority 10 to sign the notes." 11 Do I have that right? 12 A. Yes. 13 Q. What does "proper" – what did you 14 mean by the phrase "proper authority"?</p> <p>15 A. I mean going through the process of 16 what I would expect to see in making a loan of 17 \$7.4 million. 18 Q. So that's just your own subjective 19 view. 20 Is that fair? 21 A. No. 22 I mean, I think there's a legal 23 basis for that, so yeah. 24 Q. What's your legal basis for that? 25 A. There is a process to go through in</p>	Page 116	<p>1 D. Sauter 2 papering a transaction like a \$7.4 million 3 loan. And my understanding of the process, as 4 described to me by Frank Waterhouse, was not 5 the proper process. 6 Q. Is there a policy or a law that 7 requires a particular process to be followed 8 that you're aware of? 9 A. What I would expect is 10 communications among the various parties that 11 are involved and agreement that this should be 12 a loan rather than just transferring money and 13 sign a note. 14 Q. You knew when you signed this 15 declaration that Mr. Waterhouse in fact was an 16 officer of HCMFA at the time his signature was 17 put on the notes. Correct? 18 A. Yes. 19 Q. And is it your view that an officer 20 is not authorized to execute notes on behalf of 21 the company for which he or she works for? 22 A. I think every company has 23 limitations on authority. 24 Q. And what limits are you aware of on 25 Mr. Waterhouse – withdrawn.</p>	Page 117

<p>1 D. Sauter</p> <p>2 What limits are you aware of that</p> <p>3 existed on Mr. Waterhouse's authority to sign</p> <p>4 notes on behalf of HCMFA in May of 2019?</p> <p>5 A. I don't know what the HCMFA – what</p> <p>6 the partnership agreement says, or I should say</p> <p>7 the general partnership agreement says.</p> <p>8 But what I would expect is the full</p> <p>9 participation of legal, accounting and then</p> <p>10 perhaps Mr. Dondero.</p> <p>11 Q. Do you know if Mr. Waterhouse has</p> <p>12 ever signed any other notes on behalf of HCMFA</p> <p>13 or any other affiliated entity?</p> <p>14 A. I'm sure he has.</p> <p>15 Q. Did you do – as part of your</p> <p>16 investigation, before reaching your conclusion</p> <p>17 that Mr. Waterhouse didn't have proper</p> <p>18 authority, did you try to determine whether in</p> <p>19 fact he had previously issued notes on behalf</p> <p>20 of HCMFA or other affiliates?</p> <p>21 A. I can't answer your question without</p> <p>22 knowing the facts surrounding the execution of</p> <p>23 any particular note.</p> <p>24 I mean, I think it matters the</p> <p>25 amount of the note, the term of the note.</p>	Page 118	Page 119
<p>1 D. Sauter</p> <p>2 witness, save my questions till trial. Thank</p> <p>3 you.</p> <p>4 MR. MORRIS: Thank you, sir. Have a</p> <p>5 good day.</p> <p>6 MR. RUKAVINA: Madam Reporter, just</p> <p>7 before we're done, just to confirm, the witness</p> <p>8 does want his 30 days to read and review, so</p> <p>9 please send the transcript to me with exhibits.</p> <p>10 THE REPORTER: And Michael, do you</p> <p>11 need a copy?</p> <p>12 MR. AIGEN: Yeah, we'll order one,</p> <p>13 just regular time. Doesn't need to be</p> <p>14 expedited.</p> <p>15 (Time Noted: 3:38 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19 <u>DENNIS C. SAUTER</u></p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this day of 2021.</p> <p>23</p> <p>24</p> <p>25 Notary Public</p>	Page 120	Page 121
<p>1 District of Columbia, to wit:</p> <p>2 I, Stacey L. Daywalt, a Notary</p> <p>3 Public of the District of Columbia, do hereby</p> <p>4 certify that the within-named witness remotely</p> <p>5 appeared before me at the time and place herein</p> <p>6 set out, and after having been duly sworn by</p> <p>7 me, according to law, was examined by Counsel.</p> <p>8 I further certify that the</p> <p>9 examination was recorded stenographically by me</p> <p>10 and this transcript is a true record of the</p> <p>11 proceedings.</p> <p>12 I further certify that I am not of</p> <p>13 counsel to any of the parties, nor an employee</p> <p>14 of counsel, nor related to any of the parties,</p> <p>15 nor in any way interested in the outcome of</p> <p>16 this action.</p> <p>17 As witness my hand and Notarial Seal</p> <p>18 this 17th day of November, 2021.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 <u>Stacey L. Daywalt, Notary Public</u></p> <p>23 My Commission Expires: 4/14/2026</p> <p>24</p> <p>25</p>		

I N D E X			Page 122	Page 123
1	WITNESS	EXAMINATION BY	PAGE	1 NAME OF CASE:
2				2 DATE OF DEPOSITION:
3	DENNIS C. SAUTER	BY MR. MORRIS	4	3 NAME OF WITNESS:
4				4 Reason Codes:
5				5 1. To clarify the record.
6				6 2. To conform to the facts.
7				7 3. To correct transcription errors.
8	-----EXHIBITS-----			8 Page _____ Line _____ Reason _____
9	PREVIOUSLY MARKED EXHIBITS	PAGE	LINE	9 From _____ to _____
10	Exhibit 181			10 Page _____ Line _____ Reason _____
11	Declaration of Dennis C. Sauter, Jr.	24	3	11 From _____ to _____
12	Exhibit 54			12 Page _____ Line _____ Reason _____
13	E-mail chain with attachment dated 5/2/19			13 From _____ to _____
14	D-CNL003777-779	25	25	14 Page _____ Line _____ Reason _____
15	Exhibit 57			15 From _____ to _____
16	Promissory Note dated 5/3/19			16 Page _____ Line _____ Reason _____
17	D-CNL003764-65	29	5	17 From _____ to _____
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19	Consolidated Financial Statements and Supplemental Information			19 From _____ to _____
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23	Memo dated 5/28/19	83	2	23 From _____ to _____
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